

# Legal Bulletin

May 2009

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### Capital Market

Name of the enactment	Order No. 26/2009 of the National Securities Commission (“NSC”) for the approval of the Regulation No. 4/2009 on the Public Register of the NSC (“ <b>Regulation 4/2009</b> ”)
Publication	Official Gazette of Romania, Part I, No. 343/22.05.2009
Entry into force	22 May 2009 <ul style="list-style-type: none"><li>• Law No. 297/2004 on capital market, as further amended and supplemented;</li><li>• Law No. 31/2006 on securitization;</li><li>• Law No. 32/2006 on mortgage bonds.</li></ul>
Main provisions	<p>Regulation 4/2009 establishes the main rules for the registration / de-registration of the main entities of the capital market in/from the relevant sections and sub-sections of NSC Public Register.</p> <p>As an additional issue worth mentioning, the registration number and date of each registered entity must be provided in all official documents and correspondence of the relevant entity, together with the identification data thereof.</p>
Repealed enactments	Regulation No. 5/2006 on the Public Register of the NSC approved by the NSC Order No. 14/2006
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### Civil Procedure

Name of the enactment	Government Emergency Ordinance No. 42/2009 for the amendment of the Code of Civil Procedure (“ <b>GEO 42/2009</b> ”)
Publication	Official Gazette of Romania, Part I, No. 324/15.05.2009
Entry into force	15 May 2009
Main provisions	GEO 42/2009 amends the Code of Civil Procedure by introducing the obligation to obtain the court’s approval of the forced execution procedure. In addition, this enactment provides for the challenge procedures that may be exercised, under

certain circumstances, against the resolutions on the request for approval of the forced execution procedure, i.e.: (i) the judgment for the approval of the request for forced execution procedure is not subject to any challenge procedure, and (ii) the judgment rejecting the request for approval of the forced execution procedure may be challenged by a final appeal, but only by the creditor, within 5 days as of its communication.

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## Commercial Law

Name of the enactment

Law No. 163/2009 on the approval of the Government Emergency Ordinance No. 39/2008 amending and supplementing Law No. 58/1934 on bills of exchange and promissory notes (“**Law 163/2009**”)

Publication

Official Gazette of Romania, Part I, No. 322/14.05.2009

Entry into force

17 May 2009

Connection with other enactments

Law No. 58/1934 on bills of exchange and promissory notes, as further amended and supplemented

Main provisions

Law 163/2009 approves the Government Emergency Ordinance 39/2008, with the following supplementations:

- With regard to the identification data of the drawee / the promissory note issuer, the name thereof may be written in abbreviated form without thereby triggering the invalidity of the bill of exchange;
- With regard to the identification of the drawee / the promissory note issuer, Law 163/2009 establishes the obligation to provide the sole identification code / number contained in the drawee’s / the promissory note issuer’s identification or registration documents;
- With regard to the details of the bill of exchange signature, Law 163/2009 establishes the mandatory content thereof, namely: (i) the legible name of the obligor, (ii) the holograph signature of the individual obligor, or of the authorized representatives / proxies of the legal entity.

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## Insurance

### 1. The agreement for mandatory home insurance against earthquakes, landslides

	<b>or floods</b>
Name of the enactment	Order No. 5/2009 of the President of the Insurance Supervisory Commission for the enforcement of the Regulations regarding the form and clauses of the agreement for mandatory home insurance against earthquakes, landslides or floods (" <b>Order 5/2009</b> ")
Publication	Official Gazette of Romania, Part I, No. 320 /14.05.2009
Entry into force	14 May 2009
Connections with other enactments	<ul style="list-style-type: none"><li>• Law No. 32/2000 on insurance and insurance supervision, as further amended and supplemented ("<b>Law 32/2000</b>")</li><li>• Law No. 260/2008 on mandatory home insurance against earthquakes, landslides and floods ("<b>Law 260/2008</b>")</li></ul>
Main provisions	<p>Pursuant to the prerogatives set forth by Law 32/2000 and Law 260/2008, the Insurance Supervisory Commission ("<b>ISC</b>") has issued the Regulations regarding the form and clauses contained in the agreement for mandatory home insurance against earthquakes, landslides or floods (the "<b>Regulations</b>"), approved by Order 5/2009.</p> <p>The Regulations refer to the form and content of the insurance policy against natural disasters ("<b>PAD</b>"), the classification of insured dwellings, the insured amount, the payment of the insurance premium, the validity period of the PAD, the risks covered by the mandatory insurance, the excluded risks, the obligations incumbent on the owner of a building intended for dwelling purposes, etc.</p> <p>The main provisions of the Regulations regulate the following aspects:</p> <ul style="list-style-type: none"><li>• The mandatory home insurance agreement is concluded for 1 calendar year. In case the dwelling's owner is changed, the liability of the Insurance Pool Against Disasters ("<b>PAID</b>") shall run up until the expiry of the PAD concluded for that dwelling. Thus, the person alienating an insured dwelling has the obligation to pass on the PAD to the person acquiring ownership thereof, and such new owner has the obligation to notify in writing the insurer that has issued the PAD for the dwelling;</li><li>• The owner of a dwelling with an optional home insurance against earthquakes, landslides and floods has the obligation, upon expiry of the optional insurance but no later than 31 December of the first year when Law 260/2008 is applicable, to contract a mandatory insurance</li></ul>

pursuant to said law;

- The mandatory insurance amount is the maximum limit of the total damages to be paid by PAID under a mandatory insurance agreement, during the validity term thereof, irrespective of the number and value of the damages caused during the agreement validity term;
- In case several PADs are concluded for the same dwelling and for the same insurance year, the first PAD concluded shall be valid, remainder PADs shall be annulled and the insurance premium refunded by PAID;
- In case a person wishes to conclude, in addition to the mandatory insurance, an optional home insurance agreement, the latter shall be concluded only for insured amounts exceeding those established by the mandatory insurance and/or for risks which are not contemplated under the mandatory home insurance agreement;
- In case a dwelling has a mandatory insurance policy as well as an optional insurance policy, damages shall first be paid from the mandatory insurance, up to the amount of such mandatory insurance.

It must be mentioned that, although in force, the Regulations are to become effective only after the establishment of the PAID, considering that, according to Law 260/2008, mandatory home insurance agreements are executed in written form between PAID and the dwelling owner.

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## **2. Amendments to the Law No. 32/2000 on the insurance activity and supervision thereof**

Name of the enactment

Law No. 162/2009 for the approval of Government Emergency Ordinance No. 117/2007 amending paragraph (19) of Article 35 of Law No. 32/2000 on the insurance activity and supervision thereof (“**Law 162/2009**”)

Publication

Official Gazette of Romania, Part I, No. 322/ 14.05.2009

Entry into force

17 May 2009

Connections with other enactments

Law No. 32/2000 on the insurance activity and supervision thereof (“**Law 32/2000**”)

Main provisions

The main amendments brought by the Law 162/2009 are as follows:

- It extends in an explicit manner the application of various provisions of

the Law No. 32/2000 to reinsurers;

- It regulates a new source of income to the budget of the ISC, namely the percentage-based contribution from the gross premiums collected by insurers/reinsurers for the mandatory insurances established by law;
- It introduces a case for non-refunding of the license fee paid by an insurer, reinsurer or insurance broker that requests licensing from ISC, namely the withdrawal by the applicant of the documentation submitted to ISC;
- The term for notification by ISC of entities/persons that are to undergo a routine control and the issues contemplated thereby has been reduced from 30 days to 15 calendar days;
- The requirement that an unannounced control by the ISC may not last more than 3 consecutive days has been removed;
- In respect of the penalties for breaching the provisions of Law 32/2000: (i) the value of the fines has been increased to up to RON 100,000, (ii) the scope of offenders has been broadened to include certain new categories of individuals liable to penalty, respectively (iii) the criteria establishing the value of fines depending on the offender's legal form and as a percentage of the offender's share capital have been removed.

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## Real Estate

Name of the enactment

Government Emergency Ordinance No. 43/2009 for the amendment of Government Emergency Ordinance No. 19/2006 on using the Black Sea beach and the control of beach activities ("GEO 43/2009")

Publication

Official Gazette of Romania, Part I, No. 330/19.05.2009

Entry into force

19 May 2009

Main provisions

According to GEO 43/2009, beaches may be used for tourism purposes by undertakings managing tourist accommodation units, owners or managers of residential projects, undertakings performing entertainment, leisure and/or sports activities and local public administration authorities, which may enter into lease agreements with the entity holding the right to administer beaches during a summer season.

Moreover, GEO 43/2009 allows the entity holding the right to administer beaches to enter into lease agreements with the local public administration authorities from the towns and villages located on the Black Sea coast, at their request, against a quota of up to 20% of the tourist beaches located within their administrative-territorial scope.

GEO 43/2009 implements a derogation from the provisions of Law No. 213/1998 on public property and the legal status thereof in the sense that, for the 2009 summer season, the beach lease agreements are awarded directly to the undertakings managing tourist accommodation units, the owners or managers of residential projects, undertakings performing entertainment, leisure and/or sports activities and the local public administration authorities. By 30 September 2009, the lease agreements entered into in accordance with the provisions of GEO 43/2009 are to be terminated *de jure*, without any formal notice or court intervention.

Lease agreements, concluded pursuant to the provisions of Government Decision No. 241/2006 on approval of the lease of the Black Sea beach, state public property, administered by the National Administration "Apele Române", which are ongoing at the effective date of GEO 43/2009 shall continue to remain valid.

According to GEO 43/2009, the reference tariff for beach lease is determined further to a report drafted by an independent assessor.

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## State Aid

Name of the enactment

Law No. 173/2009 for the approval of Government Emergency Ordinance No. 206/2008 on the financial support measures granted by the Authority for State Assets Recovery to the undertakings in its portfolio so that they may overcome the effects of the world financial crisis ("**Law 173/2009**")

Publication

Official Gazette of Romania, Part I, No. 328/18.05.2009

Entry into force

21 May 2009

Main provisions

Law 173/2008 approves and amends Government Emergency Ordinance No. 206/2008 on the financial support measures granted by the Authority for State Assets Recovery ("**AVAS**") to the undertakings from its portfolio so that they may overcome the effects of the world financial crisis, which establishes two assistance measures that may be granted by the AVAS and the Ministry of Economy to the undertakings in AVAS portfolio which are affected by the world financial crisis.

The first of the two measures is the *safeguard aid*, which consists in reversible financial support, as credits with an interest rate at least comparable to those granted for credits to “healthy” companies and especially the reference rate approved by the European Commission. This aid must be reimbursed within 6 months as of its granting or as of the first installment of the credit, otherwise a restructuring aid may be granted or the liquidation plan may be requested to be drafted. The second support measure consists in the *restructuring aid* under the form of credits granted under the same conditions of interest rate as mentioned above, infusions of working capital or share capital, participations in the share capital increase by swapping due and payable receivables of AVAS and the Ministry of Economy into shares.

The aforementioned support measures shall be granted as state aid schemes or as individual state aids, further to adoption by the European Commission of a decision declaring such support measures to be compatible with the Common Market.

The eligibility requirements to be fulfilled in order to access the two support measures as well as the procedures for granting, monitoring and maintaining in force such facilities are to be regulated by a government decision.

To this effect, AVAS has prepared two draft government decisions, from which the one bearing on the safeguard aid has already been approved by the European Commission, and the one regarding the restructuring aid is now endorsed by the Competition Council and pending approval by the European Commission.

The amounts necessary for granting the safeguard aid are to be distributed from the privatization revenues registered in the general checking account of the State Treasury, upon AVAS request, within 10 business days as of the entering into force of each Government Decision for the distribution of such amounts. The amounts necessary for supporting the restructuring state aids are to be distributed from the state budget through the budget of AVAS.

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## Taxation

Name of the enactment

Government Emergency Ordinance No. 46/2009 on the improvement of tax procedures and decrease in tax evasion (“GEO 46/2009”)

Publication

Official Gazette of Romania, Part I, No. 347/25.05.2009



Entry into force	25 May 2009
Connections with other enactments	<ul style="list-style-type: none"><li>• Government Ordinance No. 92/2003 on the Tax Procedure Code (“<b>Tax Procedure Code</b>”);</li><li>• Government Emergency Ordinance No. 91/2003 on the organization of the Financial Guard;</li><li>• Government Ordinance No. 75/2001 on the organization and operation of the tax record;</li><li>• Law No. 571/2003 on Tax Code (“<b>Tax Code</b>”).</li></ul>
Main provisions	<p><b>1. Measures in the field of tax procedures</b></p> <ul style="list-style-type: none"><li>• Declaring taxpayers inoperative</li></ul> <p>Legal entity taxpayers or any other entities devoid of legal status shall be declared inoperative, subject to the enforcement of the related legal framework, if they meet at least one of the following conditions:</p> <ul style="list-style-type: none"><li>- Throughout a calendar semester, they do not comply with any of their declarative obligations provided by law;</li><li>- They avoid the tax inspection, by stating registered headquarters identification data which makes impossible the identification thereof by the tax authority;</li><li>- Tax authorities establish that they do not perform their activity at the registered headquarters or tax domicile they stated.</li></ul> <p>By way of exception, taxpayers undergoing insolvency or taxpayers for which a dissolution decision was issued or passed shall not be declared inoperative.</p> <ul style="list-style-type: none"><li>• Companies undergoing dissolution shall not owe any default increases.</li></ul> <p>No default increases shall be calculated for the payment of the budgetary receivables starting from the registration of the dissolution decision with the trade registry, irrespective of whether the tax receivables occurred prior or subsequent to such date.</p> <p>If the deed based on which the dissolution was registered is terminated based on an irrevocable decision, default increases shall be calculated for the period comprised between the date of registration of the dissolution deeds with the trade registry and the date when the termination decision become irrevocable.</p>

**2. Reinstatement of payment facilities which lost their validity as a result of the economic crisis**

Debtors which enjoyed facilities for the payment of outstanding tax debts granted on the basis of legal regulations in the field shall further enjoy such facilities for the amounts remaining to be paid, with all effects provided by law, if the following conditions are cumulatively met:

- Until 30 September 2008 they complied with the payment terms and the conditions required to keep the validity of the payment facilities granted in accordance with the legal provisions in the field;
- Until 30 June 2009, inclusively, at the latest, they submit an application to the tax authority in whose jurisdiction they are located requesting the maintenance of the payment facilities, as well as an application for the issuance of the tax attestation certificate for legal entities;
- Until 31 July 2009, inclusively, they produce evidence attesting to the payment, by any method provided by law, of the outstanding amounts included in the installments and unpaid up to such date, and of any tax debts, other than the debts which formed the object of the payment facilities to the budget for which the payment facility was granted, with payment terms until the issuance of the tax attestation certificate mentioned therein;
- They produce evidence attesting the establishment of the security provided under Article II, paragraph 7 of GEO 46/2009, if applicable. According to the specified paragraph, if the security established at the beginning of the payment facility was used to pay the tax debts, the debtor shall have the obligation to establish a new security until the next payment term of the new payment schedule. Securities may be established by consigning cash in a State Treasury unit in whose jurisdiction the tax domicile of its taxpayer is located, or as a bank letter of guarantee;
- The payment facilities were initially granted in compliance with the state aid legislation.

### 3. Measures to reduce tax evasion

- The tax record shall include several deeds. Thus, the tax record of individuals and of legal entities shall also include:
  - Engaging of joint liability with the debtor declared insolvent, established by a decision of the relevant tax authority which remained final in the system of administrative challenge procedures or by a court decision, as the case may be;
  - Tax inactivity, stated in accordance with law.
- Certificate attesting the payment of VAT, in the case of intra-community purchases of new means of transportation.

New means of transportation may be registered only after the applicants obtain a certificate attesting the payment of VAT. In case of intra-community purchases of means of transportation which are not new pursuant to the Tax Code, for registration purposes, the relevant tax authorities shall issue a certificate attesting that they do not owe the tax in Romania.

- By virtue of GEO 46/2009, the powers of the Financial Guard were extended. The Financial Guard may prepare minutes recording the circumstances related to the perpetration of certain actions provided by the criminal law in the financial and tax field, and to notify the criminal investigation authorities. Currently, the Financial Guard is entitled to:
  - Take preventative measures whenever there is a risk that the debtor would avoid the prosecution or would conceal or spend its wealth,
  - Ask the directors of the controlled units and any persons involved in the perpetration of the actions established to identify themselves with identification documents, and to provide written explanations,
  - Withhold documents, subject to the conditions of the Tax Procedure Code, request copies of the original documents, take evidence, samples, specimens, etc. and request the performance of technical expert appraisals required to complete the control.

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