

Legal Bulletin

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Legal Bulletin

Energy

Name of the enactment	Government Emergency Ordinance No. 101/2007 for the modification and amendment of the Law of mines No. 85/2003 and of the Law of petroleum No. 238/2004
Publication	Official Gazette of Romania, Part I, No. 684/08.10.2007
Entry into force	8 October 2007
Main provisions	<p>The content of this emergency ordinance is mostly technical.</p> <p>Its adoption was motivated by the need to homogenize the taxes and fees due to the State for the concession of mining activities and petroleum-related operations. Also, the correlation of these taxes and fees with the ascending evolution of the capitalized prices of the mining products and of the crude oil/natural gases - was targeted, including of the operation tariffs of the national transportation system of petroleum/petroleum terminal.</p>
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Labor Law

Name of the enactment	Government Emergency Ordinance No. 91/2007 for the amendment and completion of certain enactments in the social protection field („GEO 91/2007”)
Publication	Official Gazette of Romania, Part I, No. 671/01.10.2007
Entry into force	1 January 2008
Main provisions	<p>GEO 91/2007 brings amendments to the laws in the social insurance rights field. Thus, GEO 91/2007 amends (i) Law No. 19/2000 on the public pension system and other social insurance rights, (ii) Law No. 346/2002 on the insurance for work accidents and professional diseases, (iii) Law No. 76/2002 on the unemployment insurance system and the stimulation of employment, as well as (iv) Law No. 200/2006 on creating and using the Fund for guaranteeing the payment of salary debts.</p> <p>The amendments brought by GEO 91/2007 aim to harmonize the provisions on establishing the calculation base of social contributions so that the calculation base of the employer's contribution should be equal to that representing the</p>

calculation base of the individual social insurance contribution.

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Personal Data Processing

Name of the enactment

Law No. 278/2007 on approving Government Emergency Ordinance No. 36/2007 for repealing Law No. 476/2003 on approving the fee for notification of personal data processing procedures, which falls under the scope of Law No. 677/2001 for persons' protection in relation to the processing of personal data and the free circulation of such data

Publication

Official Gazette of Romania, Part I, No. 708/19.10.2007

Entry into force

22 October 2007

Main provisions

Due to the fact that it was assessed as an obstacle to the free circulation of personal data within the EU Member States, this legal enactment has repealed the fee related to the notification of personal data processing operations carried out in Romania.

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Private Pensions

Name of the enactment

Government Emergency Ordinance No. 112/2007 for the modification and amendment of Law No.411/2004 concerning the privately administered pension funds and of Law No. 204/2006 concerning the optional pensions („GEO 112/2007“)

Publication

Official Gazette of Romania, Part I, No. 710/22.10.2007

Entry into force

22 October 2007

Main provisions

GEO 112/2007 brings a series of modifications to the framework laws of the private pensions system.

The main modifications incurred by Law No. 411/2004 concerning the privately administered pensions (the framework law of the Second Pensions Pillar) are the following:

- the National Agency of Fiscal Administration is designated as a collection institution and the National House of Pensions and Other Social Rights as a recording institution ;
- photocopies of the individual acts of accession need to be transmitted, in an electronic format, by the administrator to the Commission for

Monitoring the Private Pensions System (the “**Commission**”);

- in the case of persons insured within the public pensions system on the basis of an insurance declaration, the contribution for the pensions funds is delivered only for the month(s) for which, according to the law, a contribution stage is made;
- the provision according to which the Commission can modify one of the components of the administration commission representing 0.05% a month from the net total assets of the privately administered pensions fund, was eliminated;
- the maximum limit of the contravention fee was increased from RON 50,000 to RON 100,000 ;
- the Commission may apply sanctions to the natural persons to whom, as administrators, legal representatives or exerting, de jure or de facto, functions of management or exerting, with a professional title, activities regulated by this law, the contravention is imputable.

The main modifications brought to Law No. 204/2006 concerning the optional pensions (the framework law of the Third Pensions Pillar) are the following:

- the provision according to which the Commission could suspend the administration authorization of the administrator if it is proven that the rules of an optional pensions prospect, the provisions of Law No. 204/2006 or of the norms adopted by the Commission were breached, was repealed ;
- the marketing activity of the prospect of the optional pensions can be carried out only via a marketing agent, legal person or, as the case may be, natural person that carries on its activity for this purpose, authorized or approved by the Commission.

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Property Fund (“Fondul Proprietatea”)

1. Amendment of Title VII of Law No. 247/2005 on the reform in the property and law fields, as well as some ancillary measures

Name of the enactment

Government Emergency Ordinance No. 93/2007 for the amendment and completion of title VII of Law No. 247/2005 on the reform in the property and law fields, as well as some ancillary measures (“**GEO 93/2007**”)

Publication	Official Gazette of Romania, Part I, No. 671/01.10.2007
Entry into force	1 October 2007
Main provisions	<p>GEO No. 93/2007 does not bring any substantive amendments to Title VII of Law No. 247/2005 on the reform in the property and law fields, as well as some ancillary amendments (“Title VII”), but it focuses on some technical amendments in relation to the operation of the Property Fund (the “Fund”) and the mechanism for granting indemnities.</p> <p>The only substantive amendment consists in repealing Article 1 para. (4) and (5) of Title VII, pursuant to which amendment the indemnities granted based on decisions of county commissions and of Bucharest City based on Law No. 290/2003 on granting indemnities or compensations to Romanian citizens for the goods owned by them, under distraint, withheld or remained in Bessarabia, Northern Bucovina and Herta county, as a result of warfare and of the application of the Peace Treaty between Romania and the Allied and Associated Powers, signed in Paris on 10 February 1947, will not be capitalized in the indemnification system promoted by Title VII.</p> <p>GEO 93/2007 introduces a new text in Title VI, which establishes the possibility that the shareholders of the Fund may decide to amend the constitutive act in the sense of introducing an administration system different from the one provided under Title VII, in accordance with the provisions of Company Law No. 31/1990.</p> <p>Other amendments focus on the purpose of the funds representing the 3% quota withheld from the amounts ensuing from the recovery of Romania’s debts resulting from foreign trade and international economic cooperation, carried out before 31 December 1989 and which have to be paid by the Romanian State to the Fund, i.e. the 3% quota withheld from the amounts resulting from the recovery of rights resulting from commercial agreements and governmental payments and corresponding banking technical arrangements, regulated by Government Ordinance No. 59/1994 on the regulation of import-export operations carried out through clearing, barter and international economic cooperation based on commercial agreements and governmental payments, republished, and which have to be paid by the Romanian State to the Fund.</p>
Name of the enactment	Government Emergency Ordinance No. 118/2007 for the completion of Title VII of Law No. 247/2005 on the reform in the property and law fields, as well as some ancillary measures (“ GEO 118/2007 ”)

Publication	Official Gazette of Romania, Part I, No. 736/31.10.2007
Entry into force	31 October 2007
Main provisions	GEO 118/2007 brings a strictly technical amendment, meant to supplement the funds from which the indemnities will be granted in cash to the persons whose immovables were abusively taken over by the Romanian State and which chose this indemnification option. According to Article 14 ¹ para. (4) of Title VII, the funds required for granting indemnifications in cash are created based on the dividends granted by the Fund to the Romanian State. With the entry into force of GEO 118/2007, such funds are supplemented by the allocation of certain amounts from the State budget, within the limits of RON 33 million.
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Public Procurement & Concessions

Name of the enactment	The Government Emergency Ordinance No. 94/2007 for the modification and amendment of Government Emergency Ordinance No. 34/2006 concerning the award of the public procurement contracts, the public works concession contracts and the services concession contracts
Publication	Official Gazette of Romania, Part I, No. 676/04.10.2007
Entry into force	4 October 2007
Connections with the Community legislation	Directive No. 2004/18/EC on the coordination of the procedures for the award of public works contracts, public supply contracts and public service contracts Directive No. 2004/17/EC concerning the procurement procedures of entities operating in the water, energy, transport and postal services sectors Council Directive 89/665/EEC 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 Council Directive 1992/13/EEC 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
Main provisions	Through Government Emergency Ordinance No. 94/2007, modifications and amendments were brought to Government Emergency Ordinance No. 34/2006.

Among the most important ones we mention:

1. The field of application of Government Emergency Ordinance No. 34/2006

Government Emergency Ordinance No. 94/2007 modifies certain provisions regarding the applicability of Government Emergency Ordinance No. 34/2006 in the case of contracts awarded by an economic operator which does not have the quality of contracting authority.

Government Emergency Ordinance No. 34/2006 will apply for the public procurement contracts for works with a higher value than EUR 2,500,000 and the public procurement contracts for services with a higher value than EUR 125,000 awarded by an economic operator which is not a contracting authority, but are directly funded, in a percentage of over 50%, by a contracting authority.

For the public procurement contracts for works and the public procurement contracts for services with values lower or equal to the ones previously mentioned, as well as for the supply contracts, regardless of their value, the contracting authority which funds the award of the respective contracts, in a percentage of over 50%, is obliged to impose through the financing contracts either the application of the Government Emergency Ordinance No. 34/2006 or the application of a specific procedure established through internal norms by the contracting authority, in the conditions of the transmission of a participation invitation to at least 3 economic operators.

2. The value thresholds that determine the applicability/inapplicability of the various procedures regulated by Government Emergency Ordinance No. 34/2006

The annual value threshold, under which products, services or works can be directly acquired without the application of the procurement procedures provided by Government Emergency Ordinance No. 34/2006, was increased from EUR 5,000 to EUR 10,000.

Also, the call for tender procedure will be applied for the award of public procurement of products and services contracts the value of which is within the limit of a ceiling of EUR 75,000 (compared to EUR 40,000, as up to the moment). In the case of public procurement of works contracts, the call for tender procedure will be applied for the contracts the accrued annual value of which is lower than the sum of EUR 500,000 (compared to EUR 250,000, as up to the

present).

3. The procedure for resolving contestations

Specific provisions were introduced regarding the consequences of the abusive exertion of the right to submit contestations by administrative-judicial means. Therefore, the National Council for the Resolution of Contestations may sanction the dissenting person, upon the request of the contracting authority and after the issuance of the decision through which the contestation is resolved, with the payment of a fine between RON 10,000 and 35,000.

Also, the possibility for the National Council for the Resolution of Contestations to order, as a provisional measure, the cessation of the suspension of the award procedure, which operates *de jure* as a consequence of introducing a contestation.

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State Aid

1. Granting of de minimis aids for the development or modernization of enterprises

Name of the enactment

Government Decision No. 1164/2007 concerning the granting of *de minimis* aids for the development or modernization of enterprises

Publication

The Official Gazette of Romania, Part I, No. 690/11.10.2007

Entry into force

11 October 2007

Connections with other enactments

Government Emergency Ordinance No. 117/2006 concerning the national procedures in the field of State aid, approved with modifications and supplements by Law No. 137/2007

Government Decision No. 651/2006 concerning the approval of the Policy in the field of State aid for the period 2006-2013

Government Decision No. 1164/2007 institutes a State aid scheme which has as object the granting of *de minimis* aids.

Main provisions

The *de minimis* aid is a State aid that does not exceed, in a determined period of time, the ceiling provided by the Community regulations in this field.

These State aids are not subjected to the procedure of notification to the European Commission.

In order to benefit from the *de minimis* aids, the enterprises will need to fulfill

cumulatively the following conditions:

- to be small and medium-sized enterprises having the registered office and carrying on the activity in Romania,
- to carry on one of the activities listed in Annex 1 to the Government Decision No. 1164/2007,
- over a period of 3 consecutive tax years, prior to the date of the request, they must not have received de minimis aids (in case they received such aids, they cannot exceed, cumulatively, a ceiling of 200,000 Euros),
- they present an investment plan that reflects the manner of utilization of the requested sums,
- they do not have overdue debts to the consolidated component budgets of the general budget,
- they do not belong to the category of enterprises in difficulty, according to the rules enacted by the European Commission,
- no decisions to recover a State aid were issued against them or, in case such decisions were issued, they were executed and
- they have not received an illegal aid.

The de minimis aids will be offered as grants, from the State budget, through the budget of the Ministry of Economy and Finances. In principle, these types of aids cannot be cumulated with other types of State aids, when the same eligible costs are considered. The application duration of this scheme is of 5 years, respectively, the period 2007-2012, with the possibility of its extension.

The maximum budget of the scheme is of 5 million Euros, within the limit of the annual budget ceilings over the period of those 5 years.

The possibility of granting of the specific individual allocations within the State aid scheme is provided in detail in Annexes 1 and 2 to Government Decision No. 1164/2007.

2. Regional State aid scheme granted for the investments made in the industrial parks

Name of the enactment

The Order of the Minister of Interior and Administrative Reform No. 296/2007 concerning the approval of the regional State aid scheme granted for the

		investments made in the industrial parks
Publication		The Official Gazette of Romania, Part I, No. 683/08.10.2007
Entry into force		October 8, 2007
Connections with other enactments		Government Ordinance No. 65/2001 concerning the establishment and functioning of industrial parks, approved, with amendments, by Law No. 490/2002, with the subsequent amendments
Connections with Community legislation		Commission Regulation (EC) No. 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid The Guidelines concerning regional State aids for the period 2007-2013 Commission Regulation (EC) No. 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises
Main provisions		<p>The Order of the Minister of Interior and Administrative Reform No. 296/2007 institutes a regional State aid scheme granted for the investments made in industrial parks. The increase of attractiveness of the regions as locations for investments and that of the degree of economic competitiveness are being pursued through the industrial parks. The Order presents the tax facilities and the conditions for granting them in the case of the establishment and development of the industrial parks.</p> <p>The scheme instituted in this manner is exempted from the obligation of notification to the European Commission.</p> <p>According to this scheme, in principle, State aids will be granted in all the fields of activity. However, the Order No. 296/2007 provides a number of domains excepted from this rule, such as: the export activities to Member States or countries or activities that could favor the utilization of the national products to the detriment of those from import, the transports sector in what concerns the purchase of transportation equipments.</p> <p>In order to benefit from the State aid, the enterprises will need to fulfill cumulatively the following conditions: (i) to present, before the inception of the works for the project, a request for aid within the scheme; (ii) the authority will need to confirm, in writing, before the inception of the works, that the project fulfills the eligibility conditions set in the scheme.</p> <p>The financial support established through this scheme is granted only in what</p>

regards the initial investment. Its beneficiary will need to provide the proof of a contribution of at least 25% of the investment costs, either through own resources or through external financing (in a form not involving any other public aid). Also, the beneficiary is obliged to maintain the investment for which it benefited from aid for (a) minimum 5 years from its finalization for the big enterprises or (b) minimum 3 years for the small and medium enterprises.

The financial aid is granted in all the 8 development regions of Romania, and the estimated number of the beneficiaries is of 45 economic operators.

The manners of granting the State aid are provided under the form of exemptions from payment of taxes on lands and buildings and of taxes for the modification of the destination of the lands connected to the industrial parks and for their expulsion from the agricultural circuit.

The implementation period of the scheme is 2007-2013, being estimated that maximum 22 titles of industrial parks will be granted.

The authority responsible for the administration of the scheme is the Ministry of Interior and Administrative Reform.

3. Incentive measures for performing investments

Name of the enactment	Government Decision no. 1165/2007 for stimulating economic growth by supporting the performance of investments (“GD 1165/2007”)
Publication	Official Gazette of Romania, Part I, No. 688/10.10.2007
Entry into force	10 October 2007
Main provisions	<p>GD 1165/2007 introduces a State aid scheme for purposes of regional development by stimulating investments and creating new jobs. The State aid scheme thus established is exempted from the obligation to be notified to the European Commission.</p> <p>The State aid scheme applies to undertakings that (i) are headquartered and carry out their activities in Romania, (ii) perform investments exceeding EUR 30 million and (iii) create minimum 300 new jobs, further to such performance of investments.</p> <p>The State aid scheme applies to all the sectors, save for the fisheries, aquaculture, coal industry, steel industry, transport, shipbuilding, synthetic fibers, initial manufacturing of certain agricultural products, listed in Appendix no. 1 to the Treaty establishing the European Community. Also, no State aids can be granted</p>

in favor of the activities relating to export or favoring the national products in the detriment of import products.

The State aid scheme does not benefit to companies in difficulty or the companies against which a decision has been issued for the recovery of a state aid, if the decision has not yet been implemented. Also, the state aid cannot be applied under GD 1165/2007 in favor to entities which, for the same eligible costs, were granted a state aid based on other state aid schemes from other state aid suppliers.

The Ministry of Economy and Finances is the grantor and the authority supervising the implementation of this State aid scheme.

The granting of the state aid is made by allotting non-reimbursable amounts from the State budget, through the budget of the Ministry of Economy and Finance, for funding, in certain percentages, the eligible expenses incurred in making investments in tangible and intangible immovable assets or in creating new places of work.

The State aid an undertaking can benefit from pursuant to such scheme cannot exceed the level of EUR 28.125 million for performing investments and creating new jobs in any development region, except for 8 București-Ilfov Development Region, where the maximum level is EUR 22.5 million.

The duration of the State aid scheme provided by GD 1165/2007 is 5 years (the period 2007-2011), with the possibility to extend it. The total scheme budget is EUR 500 million, within the limits of the annual budgetary ceilings for the 5 years. For the remaining 2007, the state aid scheme budget is EUR 10 million.

The estimated total number of businesses which can benefit from a State aid pursuant to the scheme is 110, the annual average number of beneficiaries being 22.

In the content of the appendices to GD 1165/2007, there is a detailed presentation of the criteria and procedure for granting this State aid.

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Tax Law

1. Tax Code

Name of the enactment

Government Emergency Ordinance No. 106/2007 for the modification and amendment of Law No. 571/2003 concerning the Fiscal Code („GEO No.

	106/2007”)
Publication	The Official Gazette of Romania, Part I, No. 703/18.10.2007
Entry into force	1 January 2008
Main provisions	<p>The urgency to adopt this ordinance was determined by the necessity to ensure the implementation of legislative measures that allow the drawing up, in real time, of the budget project for the year 2008 and of a body of secondary legislation aimed at supporting the business environment, as well as in order to respect the commitments undertaken before the European Commission concerning the transposition of the Community Directives in the fiscal sector. The main modifications brought by GEO 106/2007 are the following:</p> <ul style="list-style-type: none">• the manner of calculation of the fiscal value for the fixed redeemable means and lands was modified;• it is expressly mentioned that the revenues made from the liquidation of a Romanian legal person represent revenues obtained from Romania;• certain categories of revenues of the non-profit, union and employers’ organizations, for which no tax on profit is paid, were added, among which could be found as well the sums received from the revenue tax due by the natural persons;• modifications were introduced to the types of expenses known as deductible or with limited deductibility at the calculation of the tax on profit;• starting with the year 2010, all the tax payers will apply the system of anticipated payments to the payment of the tax on profit;• clarifications regarding the calculation and taxation of the revenues obtained from the liquidation of a legal person were inserted;• important modifications were added to the title regarding the value added tax, especially to the principle of territorial applicability, the playability of the intra-Community deliveries of goods, exempted from VAT., the basis of taxation for intra-Community acquisitions, the exemptions from VAT for intermediations, as well as to the notion of goods import from the perspective of this tax. All these modifications target the transposition of the relevant Community Directives in the

field.

Significant modifications were made to the provisions of the Fiscal Code regarding excise duties for the same purpose of transposing the Community Directives in the field.

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Name of the enactment

2. Notification on agreements concluded with non-residents
Order No. 1415/2007 concerning the procedure of registration of the contracts concluded between Romanian legal persons and foreign non-resident legal or natural persons („**Order 1415/2007**”)

Publication

Official Gazette, Part I, No. 699/17.10.2007

Entry into force

17 October 2007

Main provisions

Order 1415/2007 was issued on the basis of item 21 para. (1) of the methodological norms for application of Title I of Law No. 571/2003 on the Fiscal Code, approved by Government Decision 44/2004, as further amended and completed, which established the obligation of all Romanian legal entities benefiting from service provision activities (for instance, construction works, assembling works, supervision, consultancy, technical assistance) performed by non-resident natural or legal persons to register the agreements having this object

, with the territorial tax organs in whose jurisdiction the Romanian legal persons who are the beneficiaries of the contracts have their tax domicile.

In the case of the Romanian legal persons having the quality of big and medium taxpayers, Order 1415/2007 provides the obligation to register with the tax body competent for the administration thereof.

The registration of the contracts is accomplished by submitting to the competent tax organ the „Declaration of registration of the initial/additional (connected) contracts concluded with foreign non-resident persons”, provided in annex No. 1 to Order 1415/2007. The Declaration comprises the identification data of the Romanian legal person and of the foreign natural or legal persons, as well as data on the contract: the number and date of the contract, the object of activity, the period in which the activity takes place.

The Declaration of registration must be submitted within 15 days from the date of conclusion of the contracts. The modifications occurred in the declared data must be declared through submitting the same type of declaration and in the same

timeline, calculated from the date of modifications.

Considering that the declaration provided by Order 1415/2007 fits into the category of informative declarations regulated by Article 53 of the Fiscal Procedural Code, the failure to file it is sanctioned with a fine ranging from 12,000 lei to RON 14,000, according to Article 219 para. (2) letter c) of the Fiscal Procedure Code.

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