

Legal Bulletin

September – October 2008

Corporate Law	1
Labor Law	1
Labor Safety	4
Real Estate	5
Taxation	7

September - October

Legal Bulletin

Corporate Law

Name of the enactment	Order No. 2594/2008 approving the Methodological Norms concerning the keeping of trade registries, the making of registrations and release of information (“ Order 2594/2008 ”)
Publication	Official Gazette of Romania, Part I, No. 704/16.10.2008
Entry into force	16 October 2008
Connections with other enactments	Trade Registry Law No. 26/1990, republished, as further amended and supplemented
Main provisions	<p>The scope of Order 2594/2008 is to establish the procedures involved in the keeping of trade registries, the operation of the National Trade Registry Office as well as the trade registry offices organized in each county.</p> <p>One of the amendments, with important effects in practice, brought by Order 2594/2008 refers to the obligation of the persons empowered to perform the formalities before the trade registry to provide a notarized special proxy, lawyer power-of-attorney or delegation of the legal adviser. Therefore, a power-of-attorney included in the general meeting decision of the represented company is no longer valid unless the decision is authenticated. The general manager of the National Trade Registry Office will issue mandatory instructions in the application of these methodological norms.</p>
Author	gabriel.vasii@tuca.ro

Labor Law

1. Case law concerning the power of representation of trade union organizations

Name of the enactment	Decision No. 7/2008 of the High Court of Cassation and Justice on the examination of the recourse in the interest of the law, declared by the general attorney of the Prosecutor’s Office attached to the High Court of Cassation and Justice, in connection with the interpretation and application of the provisions of Article 17 paragraph (1) letter c) and of Article 18 paragraph (3) final thesis of Law No. 130/1996 on the collective bargaining agreement, republished, concerning the conditions required for acquiring the power of representation by the trade union organizations constituted at unit level (the “ Decision ”)
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Publication	Official Gazette of Romania, Part I, No. 691/10.10.2008
Pronouncement date	21 January 2008
Main provisions	<p>Based on the Decision, the provisions of Article 17 paragraph (1) letter c) and of Article 18 paragraph (3) final thesis of Law No. 130/1996 on the collective bargaining agreement, concerning the conditions required for acquiring the power of representation by the trade union organizations constituted at unit level, shall have to be interpreted as follows: trade union organizations at unit level are representative if they fulfill either the conditions provided by Article 17 paragraph (1) letter c) of Law No. 130/1996 on the collective bargaining agreement, republished, i.e. they have the legal status of trade union organization and the number of members of the trade union corresponds to at least 1/3 of the number of employees in the unit, or the condition provided by Article 18 paragraph (3) final thesis of the law, i.e. it is affiliated to a representative trade union organization.</p> <p>2. Amendments to the calculation base for the rights granted from the unemployment social security budget</p>
Name of the enactment	Government Emergency Ordinance No. 126/2008 on the amendment and supplementation of certain enactments for the purpose of eliminating the connections between the level of the rights granted from the unemployment social security rights and the level of the minimal gross salary level at country level and establishing the measures for the application of the Community rules (“ GEO 126/2008 ”)
Publication	Official Gazette of Romania, Part I, No. 697/14.10.2008
Entry into force	14 October 2008
Main provisions	GEO 126/2008 amends Law No. 76/2002 on the unemployment social security system and stimulation of employment, in that it eliminates the connections between social security rights and the level of the minimal gross base salary at country level. The minimal gross base salary at country level was replaced, as calculation base, by the reference social indicator of unemployment social security and employment stimulation representing the unit quoted in RON to which the money considerations are related, except for the unemployment allowance, paid from the unemployment social security budget, granted for the purpose of ensuring the persons’ protection in the unemployment social security system as well as for the purpose of stimulating certain categories of persons to be employed, as well as stimulating employers to employ persons in search of a job.

The value of the reference indicator of unemployment social security and employment stimulation is of RON 500.

3. Income made based on civil conventions or collaboration agreements

Name of the enactment	Law No. 200/2008 on the approval of Government Emergency Ordinance No. 91/2007 for the amendment and supplementation of certain enactments in the social protection field (" Law 200/2008 ")
Publication	Official Gazette of Romania, Part I, No. 725/27.10.2008
Entry into force	30 October 2008
Main provisions	Further to the entry into force of Law No. 200/2008, Article 26 paragraph (1) of Law No. 19/2000 on the public pension system and other social security rights is supplemented in that the social security contribution is not due for the amounts corresponding to revenues received based on civil conventions or collaboration agreements either. In the initial wording of the text, the amounts corresponding to revenues received based on civil conventions or collaboration agreements were not mentioned among those for which no social security contributions are due, such as: the amounts paid from the state social security budget, the travel and delegation daily allowances, delegation, secondment and transfer allowances, the revenues obtained from royalties, the revenues obtained from the employees' participation in the profit, etc.

4. New legal holidays

Name of the enactment	Law No. 202/2008 for the amendment of paragraph (1) of Article 134 of Law No. 53/2003 – Labor Code (" Law 202/2008 ")
Publication	Official Gazette of Romania, Part I, No. 728/28.10.2008
Entry into force	31 October 2008
Main provisions	Further to the entry into force of Law 202/2008, the following days have been declared, in addition to the ones previously regulated, as legal holidays which shall be non-working days: <ul style="list-style-type: none">• The first and second days of Pentecost;• The Assumption of Blessed Virgin Mary (15 August). For religions other than Christian, Law 202/2008 establishes 2 free days for each annual religious holiday.

Author

mihai.anghel@tuca.ro

Labor Safety

Name of the enactment	Government Decision No. 1029/2008 on the conditions of introducing machinery on the market (“ GD 1029/2008 ”)
Publication	Official Gazette of Romania, Part I, No. 674/30.09.2008
Entry into force	29 December 2009
Connections with other enactments	<ul style="list-style-type: none">• Law No. 608/2001 on the evaluation of the products’ compliance, republished;• Law No. 319/2006 of labor safety and health.
Connections with other Community enactments	Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC, published in the Official Journal of the European Union, series L no. 157 of 9 June 2006 (“ Directive 2006/42/CE ”)
Main provisions	<p>The machinery field, as concerns their introduction on the market, is currently regulated by Government Decision No. 119/2004 (“GD 119/2004”) establishing the conditions for the introduction of machinery on the market. This enactment ensured the transposition in the Romanian legislation of Directive 98/37/EC of the European Parliament and of the Council of 22 June 1998 on the approximation of the laws of the Member States relating to machinery.</p> <p>In 2006 a new regulation was passed at European level, i.e. Directive 2006/42/CE, regulating the issues related to the conditions concerning the introduction of machinery and safety components thereof on the market, establishing minimal safety and health conditions in relation to this category of machinery and components.</p> <p>GD 1029/2008 transposes in the Romanian legislation Directive 2006/42/CE. The main provisions of GD 1029/2008 refer to:</p> <ul style="list-style-type: none">• Defining, in accordance with the provisions of Directive 2006/42/CE, the terms used in the regulated field;• Establishing the conditions for the introduction on the market and operation of machinery and quasi-machinery;• Appointing the Labor Inspection as market supervisory body and the Ministry of Labor, Family and Equality of Chances as competent authority in this field;• Establishing the procedures for the assessment of the compliance

applicable to machinery and quasi-machinery;

- Clarifying the prerogatives and obligations of certification bodies;
- Regulations concerning the manner of cooperation with the European Commission and the Member States of the European Union;
- Establishing the sanctions applicable in the case of breaching the provisions of GD 1029/2008.

Repealed enactments

Upon the entry into force of GD 1029/2008, GD 119/2004 shall be repealed.

Author

maxim.dogoter@tuca.ro

Real Estate

1. Amendments to the regulations on expropriations related to building works for highways and national roads

Name of the enactment

Law No. 184/2008 for the amendment and supplementation of Law No. 198/2004 on certain measures prior to the building works for highways and national roads ("**Law 184/2008**")

Publication

Official Gazette of Romania, Part I, No. 740/31.10.2008

Entry into force

3 November 2008

Connections with other enactments

- Law No. 198/2004 on certain measures prior to the building works for highways and national roads, as further amended ("**Law 198/2004**")
- Government Ordinance No. 43/1997 on the framework applicable to roads, republished, as further amended and supplemented ("**GO 43/1997**")
- Law No. 50/1991 on authorizing the performance of building works, republished, as further amended and supplemented ("**Law 50/1991**")

Main provisions

Law 184/2008 was issued for the purposes of simplifying the expropriation procedures necessary for the building works of national, county or local roads.

The amendments brought by Law 184/2008 refer to the following main issues:

- Enlarging the scope of Law 198/2004 and of the special expropriation procedures regulated by this enactment to include county or local roads;
- Defining the expropriation corridor as including all the road elements provided at Article 2 of GO 43/1997, established by the Ministry of

Transportation, for national roads, or by the relevant departments of county councils, for county or local roads;

- After the National Cadastre and Real Estate Publicity Agency has sent to the territorial-administrative units the list of real estates subject to expropriation, located in the expropriation corridor, it is prohibited to issue any endorsement, agreement, permit, authorization in respect of the real estates subject to expropriation; the documents issued in breach of this interdiction shall be null and void;
- The exemption of the building works for national, county or local roads from the requirement of obtaining the building permit provided by Law 50/1991;
- Establishing special procedures and terms for the issuance of the urban planning certificate and of the endorsements, agreements, permits and authorizations required by urban planning certificates, except for the environmental agreement, upon the request of Compania Națională de Autostrăzi și Drumuri Naționale din România - S.A. (the Romanian national company for highways and national roads), subject to the application of the tacit approval procedure, under certain special conditions, in case of non-issuance of such documents.

Author

vlad.cercel@tuca.ro

2. Decision No. LXXII of the High Court of Cassation and Justice

Name of the enactment

Decision No. LXXII of the High Court of Cassation and Justice of 15 October 2007 (“Decision LXXII/2007”)

Publication

Official Gazette of Romania, Part I, No. 685/07.10.2008

Connections with other enactments

Law No. 7/1996 on cadastre and real estate publicity

Content

By Decision LXXII/2007, the United Sections of the High Court of Cassation and Justice admitted the appeal in the interest of the law declared by the general attorney of the prosecutor’s office attached to the High Court of Cassation and Justice in respect of the incapacity of the Cadastre and Real Estate Publicity Office (“OCPI”) to stand trial as defendant in land book-related complaints grounded on the provisions of Article 50 of Law No. 7/1996, republished.

The intervention of the general attorney of the prosecutor’s office attached to the High Court of Cassation and Justice is grounded on the inconsistent practice in respect of OCPI’s capacity to stand trial as defendant in land book-related

complaints grounded on the provisions of Article 50 of Law 7/1996, republished.

In applying this legal text, some courts considered that OCPI has the capacity to stand trial as defendant. In this respect, it was claimed that although the land book activity is a non-litigation procedure, the settlement by the court of the complaint filed in respect of this activity, being a jurisdictional procedure subsequent to the land book activity, has a litigation nature. Also, it was claimed that the litigation is to be settled after a special procedure, within which the trial has to be carried out against the issuer of the document.

On the contrary, other courts decided that OCPI does not have the capacity to stand trial as defendant, since the applicable procedure is not of a litigation nature and the court is not required to settle on the existence or non-existence of a potential right of OCPI, but only the legality and grounded nature of the decision issued in the case at hand. In this case, the only persons likely to have the capacity of parties are the interested persons according to the land book notes.

The supreme court found that the latter courts accurately interpreted and implemented the provisions of the law, and maintained that Law No. 7/1996 did not contain any provisions that would legitimize the capacity of OCPI to stand trial as defendant and therefore, in the cases that have as object the complaints concerning the land book grounded on the provisions of Article 50 of Law 7/1996, republished, OCPI does not have the capacity to stand trial as defendant.

The decision of the High Court of Cassation and Justice is mandatory for the courts after the publication in the Official Gazette (7 October 2008). As of this date, the courts to which will be deferred land book-related complaints grounded on the provisions of Article 50 of Law 7/1996 having OCPI as defendant will reject such complaints due to the lack of capacity to stand trial as defendant.

Author

alina.meches@tuca.ro

Taxation

Name of the enactment

Government Emergency Ordinance No. 127/2008 for the amendment and supplementation of Tax Code Law No. 571/2003 (“GEO 127/2008”)

Publication

Official Gazette of Romania, Part I, No. 705/16.10.2008

Entry into force

16 October 2008

Main provisions

GEO 127/2008 was passed as a result of the need to support the Romanian stock exchange market and reduce the negative influences on the Romanian investment environment generated by the difficulties on the capital market,

affected by the crisis on the international financial market.

The main amendments brought by GEO 127/2008 refer to:

- Extending the definition of the resident notion, which reads as follows as per the new regulation: “non-resident – any foreign legal entity, any non-resident individual and any other foreign entities, including collective securities investment bodies, without legal personality, which are not registered in Romania, according to the law”;
- Including in the category of non-taxable revenues: (i) the revenues/profit of 2009 obtained from trading securities on the market authorized and supervised by the National Securities Commission, (ii) the earnings gained in 2009 by individuals from the transfer of negotiable instruments other than shares and securities in the case of closed companies, (iii) revenues obtained in Romania by non-residents from the transfer of derivatives, (iv) revenues obtained by non-residents on foreign capital markets from the transfer of securities held in a Romanian legal entity, as well as from the transfer of negotiable instruments, issued by Romanian residents;
- The increase of the threshold within the limit of which the following expenses are deductible: (i) the contributions made in the name of employees with optional pension funds – threshold increased from EUR 200 to EUR 400, (ii) the optional health insurance – threshold increased from EUR 200 to EUR 250;
- New provisions applicable to the business entities that carry out the activity of energy products retail.

Author

maxim.dogoter@tuca.ro



Contact details:
Victoriei Square
4-8 Nicolae Titulescu Avenue
America House, West Wing, 8th Floor
Sector 1
011141 Bucharest
Romania

 (40-21) 204 88 90

 (40-21) 204 88 99

 office@tuca.ro

 www.tuca.ro

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For details and clarifications on any of the topics dealt in our Legal Bulletin, please contact the following lawyers:

Florentin Țuca, Managing Partner (florentin.tuca@tuca.ro)

Cornel Popa, Partner (cornel.popa@tuca.ro)

Cristian Radu, Senior Associate (cristian.radu@tuca.ro)