

Legal Bulletin

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Legal Bulletin

Administrative Law

Name of the enactment	Law No. 262/2007 for the amendment and completion of Law No. 554/2004 on administrative claims
Publication	Official Gazette of Romania, Part I, No. 510/30.07.2007
Entry into force	2 August 2007
Main provisions	<p>This enactment aims to eliminate certain of the ambiguities of Law No. 554/2004 on administrative claims. Thus, the main amendments/completions brought by this enactment are:</p> <ul style="list-style-type: none">• it introduces the 1-year term within which the public authority that issued an administrative act, which can no longer be revoked for reasons of illegality due to the fact that it entered the civil circuit and became effective, can request the court to cancel such act;• the participation of the Public Ministry's representative in the settlement of the administrative claim applications is no longer mandatory. However, the Public Ministry has the possibility to appreciate, on a case-to-case basis, that the participation of its representative is necessary for defending the rule of law, citizens' rights and freedoms;• the following terms are defined: "special administrative jurisdiction", "acts concerning the relations with the Parliament", "well-grounded cases", which definitions did not exist in the former regulation;• it provides for the time as of when the 6-month term starts within which the Prefect can challenge the acts that it considers illegal, such time being the moment of communicating the act to the prefect;• it introduces the possibility to waive the administrative-jurisdictional procedure through notification to the administrative body. The damaged party that waived the jurisdictional administrative procedure has the possibility to notify the court within 15 days as of the waiver, the prior procedure provided under Article 7 no longer being necessary;

- it states that the prior complaint against an administrative act can be filed at any time, unlike that against an individual administrative enactment, for which the term is of 30 days;
- it provides for the possibility to claim the plea of illegality, whenever during the process, by way of exemption or ex officio. According to the transitory provisions, the plea of illegality can also be invoked for the unilateral administrative acts issued prior to the entry into force of Law No. 554/2004 on administrative claims;
- it enshrines a separate ground for revision where the plea of illegality was previously rejected and the decision remained final and irrevocable. The application for revision can be filed within 3 months as of the entry into force of this enactment;
- it is provided that the prior complaint can also regard aspects connected to administrative agreements, similar to conciliation in the case of commercial disputes, the term for filing the complaint being of 6 months;
- it introduces the possibility to defend a legitimate public interest by a private entity, only as a secondary resort and insofar as the violation is the logical result of the violation of the private interest;
- it introduces the possibility to obtain damages in the case of actions filed against acts issued by the Government;
- it provides that the newly issued administrative act having the same content as the suspended one is suspended de jure;
- the court may involve in the trial, ex officio or upon request, relevant social bodies or other entities. This mechanism is likely to ensure a better protection of the legitimate public interests;
- the publicity of the decisions is realized only upon request by the courts.

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Banking

Name of the enactment

Law No. 227/2007 for passing Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy

Publication

Official Gazette of Romania, Part I, No. 480/18.07.2007

Entry into force

21 July 2007

Main provisions

The main amendments brought to GEO 99/2006 refer to:

- the definitions of the terms “investment firm” and “financial instruments”;
- it introduces provisions regarding the dual administration system considering that the provisions of GEO 99/2006 were not correlated to the amendments brought to Company Law 31/1990 in December 2006;
- the managers of credit institutions that opted for the unitary administration system can be directors as well;
- the managers of the credit institution, as well as the members of the directorate, can be employees of the credit institution, representing an exception from the general rules established by Company Law 31/1990;
- the management and/or administration responsibilities can be exercised only by individuals;
- the measure of the special administration can be ordered if the exercise of the administration and/or management responsibilities is no longer ensured at the level of the credit institution; during the special administration, the term of office of the board of directors and of the managers, or of the board of supervision and of the directorate, ceases;
- saving – crediting agreements: in order to benefit from the state bonus on a regular basis, it is not necessary to justify the use of the saved amount by the locative purpose;
- the rules of administration of credit cooperative organizations.

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Commercial Law

Name of the enactment

Law No. 260/2007 on the registration of commercial operations through electronic means (hereinafter referred to as “**Law 260/2007**”)

Publication

Official Gazette of Romania, Part I, No. 506/27.07.2007

Entry into force

1 January 2008

Connections with other enactments

Accounting Law no. 82/1991

Law on electronic signature no. 455/2001

Law on the temporal mark no. 451/2004

Fiscal Code

Main provisions

This law establishes the legal regime of documents in electronic form which contain data on the economic operations of exchange or sale of goods or services,

fiscal vouchers or receipts in electronic form.

Law 260/2007 establishes rules on ensuring the safety of issuing and sending invoices in electronic form, as well as the possibility to provide electronic invoicing services.

Law 260/2007 applies to the persons established in Romania and carrying out economic activities in Romania.

The invoices, fiscal vouchers and receipts in electronic form constitute supporting documents (a document which lays at the basis of the recordings in the books of account and which attests any economic-financial operation performed).

According to the new regulation, issuers of invoices can opt for the issuance of such in electronic form subject to guaranteeing the authenticity, source and integrity of the content thereof, endorsed by attaching the electronic signature and the temporal mark.

According to Law 260/2007, the conditions that need to be complied with by the issuers of electronic invoices are:

- to use an IT system patented by the National Authority for Regulation in Communications and Information Technology;
- to have the adequate technical and human resources for guaranteeing the safety, feasibility and continuity of electronic data processing services;
- to use personnel with specialized knowledge in the electronic signature technology field and with sufficient expertise with regard to the corresponding security procedures;
- to be able to administrate and archive all the information regarding each electronic invoice issued, for the time period established by the legal norms in force;
- to use patented systems for archiving invoices issued in electronic form according to the provisions of Law 135/2007 on archiving documents issued in electronic form.

Law 260/2007 also contains provisions on the possibility to provide electronic invoicing services. In this respect, it sets forth the conditions that the provider of such services has to comply with. In the case of the provider, in addition to the conditions listed above, it needs to hold a valid agreement concluded with the legal issuer of the electronic invoice.

It provides for the establishment of the Electronic Register of issuers of invoices,

receipts and fiscal vouchers in electronic form. This register will be drawn up and updated by the Ministry of Economy and Finance.

Law 260/2007 also establishes the regime of electronic documents related to the transactions registered through the intermediary of cash registers and automatic teller machines as well as provisions on the homologation of IT systems

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Fiscal Law

Name of the enactment

Order No. 418/2007 of the Minister of Economy and Finance for the approval of the Procedure on the computation of the special duty for cars and vehicles

Publication

Official Gazette of Romania, Part I, No. 448/02.07.2007

Entry into force

2 July 2007

Connections with other enactments

Fiscal Code

Main provisions

This order establishes the procedure regarding the computation of the special duty for cars and vehicles owed by individuals or legal entities, upon their first registration in Romania.

Based on this order, individuals and legal entities owing the special duty for cars and vehicles can ask the competent fiscal body to calculate it based on the identity card of the vehicle, provided in original counterpart.

The special duty will be calculated in accordance with the methodology provided by the Fiscal Code, using the IT application produced by the General Department of IT Technology to this effect. The actual calculation will be made in accordance with the following features of the car or of the vehicle: the category of the vehicle; the pollution norm; the capacity of the cylinder; the year of production.

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Insolvency

Name of the enactment

Order of the Minister of Economy and Finance for the approval of the Procedure on declaring the insolvency of debtors individuals or legal entities, according to the provisions of Article 172 of Government Ordinance No. 92/2003 on the Code of Fiscal Procedure, republished, as further amended and completed

Publication

Official Gazette of Romania, Part I, No. 447/02.07.2007

Entry into force

2 July 2007

Main provisions

The procedure is applicable to individuals and legal entities that comply with the relevant legal requirements.

The fiscal debts for which the possibility to declare the state of insolvency is analyzed can be main fiscal liabilities as well as ancillary fiscal liabilities.

If it is ascertained that the relevant legal requirements are met, the debtor is declared insolvent based on a protocol drawn up by the department having forced execution prerogatives in the competent fiscal body, endorsed by the legal department thereof or the general department of county public finance, as the case may be, and approved by the head of the fiscal body.

During the period in which a debtor whose impoundable revenues or assets have a lower value than the fiscal liabilities is declared insolvent, the forced execution measures will not be suspended.

The fiscal debts of the debtors that are declared as insolvent and do not have any impoundable revenues or assets are deregistered from the current records and are recorded in a separate register, while the application of the forced execution assets is suspended.

The following procedures are set out:

- procedure of declaring the insolvency state of debtors, individuals or legal entities whose revenues or assets have a lower value than the fiscal liabilities;
- procedure of declaring the insolvency state of debtors, individuals or legal entities that do not have any impoundable revenues or assets;
- procedure for deregistration of the fiscal debts.

Also, there is the mention of the fiscal bodies with competence for applying this procedure.

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Labour Law

1 Amendment of the Labor Code

Name of the enactment

Law No. 237/2007 on the amendment of para. (1) of Article 269 of Law No. 53/2003 – Labor Code

Publication

Official Gazette of Romania, Part I, No. 497/25.07.2007

Entry into force

28 July 2007

Main provisions	<p>This enactment provides that the employer can be held liable, based on the norms and contractual civil liability, for the moral prejudices incurred by the employee due to the employer's fault during the time of performing the service or service-related obligations.</p> <p>The old wording of the amended text limited the employer's liability to the material prejudices caused to the employee.</p> <p>2 Amendment of the law on the settlement of labor conflicts</p>
Name of the enactment	Law No. 261/2007 for the amendment and completion of Law 168/1999 on the settlement of work disputes
Publication	Official Gazette of Romania, Part I, No. 493/24.07.2007
Entry into force	27 July 2007
Main provisions	<p>This enactment introduces a new situation when a conflict of interests can be started, i.e., when there is a case of divergence in the mandatory annual negotiation on the salaries, duration of work, work schedule and work conditions.</p> <p>Still in connection with this situation, it is provided that it is exempted from the rule of interdiction of starting a conflict of interests during the validity of a collective bargaining agreement.</p> <p>The old regulation referred only to the situation where the employer fails to observe its obligation to start the annual negotiation, by not including in the scope of conflicts of interests the situation when a dispute occurred between the parties after the start of such negotiation.</p>
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Real Estate

Name of the enactment	Law No. 217/2007 for establishing the basic criteria of duties and tariffs related to the issuance, analysis and verification of the cadastre documentations for registering the agricultural lands in the land book
Publication	Official Gazette of Romania, Part I, No. 454/05.07.2007
Entry into force	8 July 2007
Main provisions	The fees charged for drawing up the cadastre documentations required for the registration with the land book are established based on a Government decision, in amount of 2 to 10% of the lands' market value, within 90 days as of the entry

into force of this law.

The market value of the immovables is determined based on the expert's reports performed and updated by the notary public offices in accordance with the law.

The persons authorized to draw up the cadastre documentations have the obligation to meet all the requests regarding the provision of services. The refusal to do so shall be made and grounded in writing.

It specifies the authorized persons who can draw up cadastre documentations for registration of the agricultural lands in the land book.

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Social Insurance

Name of the enactment

Law No. 250/2007 for the amendment of Law No. 19/2000 regarding the public system of pensions and other social insurance rights

Publication

Official Gazette of Romania, Part I, No. 486/19.07.2007

Entry into force

22 July 2007

Main provisions

The most important amendment is the removal of the ceiling of 5 average gross salaries as the basis for calculation of the employee's quota in the CAS. However, the ceiling continues to apply to the quota of the CAS related to the employer. In regard to the time as of which this amendment is applicable, CNPAS informed the employers that it applies as of the revenues of August 2007.

In addition, some amendments were brought to the calculation method for the pensions.

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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.

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