

Legal Bulletin

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Capital Markets

Name of the enactment	Regulation No. 6/2009 on the exercise of certain rights of the shareholders in the general meetings of companies (the “ Regulation ”)
Publication	Official Gazette of Romania, Part I, No. 588/25.08.2009
Entry into force	25 August 2009
Main provisions	<p>As a general remark, the regulation covers a wide range of aspects related to the general meetings of shareholders (<i>i.e.</i> issues related to the convening of the general meeting of shareholders, including attendance thereof, specific obligations incumbent to the issuer in relation to the publicity of certain documents/information concerning the general meetings, new methods for appointing the proxies for representation in the general meetings, new rules/clarifications regarding the voting related issues, etc). The most relevant/important obligations incumbent to the issuers under the Regulation are the following:</p> <ul style="list-style-type: none">• To make available to the shareholders on their website, within at least 30 days before the date of the general meeting at least the convening notice, the total number of shares and voting rights at the date of the convocation, the documents to be presented in the meeting, a draft resolution (or, if no resolution is proposed to be passed, a comment from a competent body within the issuer), the special proxy forms to be used to vote by representation, the forms to be used to vote by correspondence;• To offer their shareholders at least one effective method for notifying the appointment of proxies (for representation in the Meeting) by electronic means; this possibility seems to conflict, however, with the provisions of Article 125 (3) of Law 31/1990, according to which the special proxy form needs to be filed with the issuer in original;• To offer the shareholders the possibility to vote by correspondence (Article 18 (2) of the Regulation);• To publish on its website, within no more than 15 days after the date of the relevant meeting, the voting results (Article 19 (2) of the

Regulation).

With regard to the convening notice, the Regulation imposes additional information to be included therein: (i) a clear description of the proceedings to be followed by the shareholders for duly participating and voting in the meeting; (ii) information as to where the shareholders may obtain the full text of the proposed resolutions and of the supporting documents from; (iii) address of the website where relevant information on the meeting is to be posted.

The Regulation expressly provides for the right of each shareholder to address questions related to the items on a specific meeting's agenda; however, the Regulation also provides for a series of limitations to such right, such as the case when providing such answers would impede on the good order and the preparation of the Meeting or would affect the confidentiality and the business interests of the issuer.

Also, the Regulation has a flexible approach on the organization of general meetings, allowing issuers to give their shareholders the possibility to attend the general meetings by electronic means.

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Consumer's Protection

Name of the enactment

Government Ordinance No. 23/2009 on the activity of accrediting conformity assessment bodies ("GO 23/2009")

Publication

Official Gazette of Romania, Part I, No. 601/31.08.2009

Entry into force

3 September 2009

Connections with other enactments

- Government Ordinance No. 26/2000 on associations and foundations, approved with amendments and supplementations by Law 246/2005 ("GO 26/2000")
- Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No. 339/93 ("Regulation (EC) No. 765/2008")

Main provisions

Regulation (EC) No. 765/2008 sets forth, at the level of the European Union, the rules and measures for market supervision as to products in

order to ensure that those products fulfill the requirements for a high protection of public interests, such as health and safety in general, health and safety in work, consumers' protection, environmental protection and security. The need to pass GO 23/2004 was determined by the fact that Regulation (EC) No. 765/2008 imposed the establishment at a national level of bodies for the accreditation of conformity assessment bodies. Secondly, the provisions of GO 23/2004 regulate the national accreditation mark.

- **National accreditation body**

The Romanian Government will pass, within 90 days from the entry into force of GO 23/2009, a Government Decision appointing, further to the proposal of the Ministry of Economy, the national accreditation body. Until that date, the Romanian Accreditation Association maintains its capacity as national accreditation body.

GO 23/2009 provides that the national accreditation body is organized as a private legal entity of public utility, having the status of association without a patrimonial purpose and organized in accordance with GO 26/2000.

The prerogatives, the management and organization of the activity carried out by the national accreditation body have the following characteristics:

- The national accreditation body is the entity which holds the monopoly for the performance of the accreditation activity; in this respect, the accreditation body is the only one competent to issue accreditation certificates for conformity assessment bodies;
- The management of the executive structure of the national accreditation body is ensured by a general manager, appointed and revoked by the Ministry of Economy; the duration of the mandate, the criteria for appointment, revocation and incompatibility of the general manager and of the executive structure shall be regulated by a Government Decision;
- The general manager may not participate in the assessment and accreditation of conformity assessment bodies;
- The Ministry of Economy, in its capacity of state authority meant to control the observance of the provisions under Regulation (EC) No. 765/2008 and, to this effect, to mediate the relations of the accreditation body with the entities involved in the accreditation

process, appoints a representative by an order of the Minister, who shall act as vice-president of the accreditation body, having a right of veto in decision-making, which will be exercised if the decisions could breach the applicable legal provisions;

- As an exception from the rules established by GO 26/2000, the status of the national accreditation body and the amendments thereto have to be endorsed by the Minister of Economy;
- The body's activity is financed from its own revenues gained from tariffs collected for the accreditation services and related activities. As an exception, the national accreditation body may benefit from state budget funds for payment of the contributions to the European and international organizations.
- **National accreditation mark**

GO 23/2009 regulates the national accreditation mark, which is a graphic sign attesting that a conformity assessment body is competent to perform the specific tasks in the field for which the latter is accredited.

Upon the entry into force of this ordinance, the Ministry of Economy, the titleholder of the accreditation mark, transfers to the national accreditation body the right to the national accreditation mark.

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Insurance

1. Performance of the insurance/reinsurance activity in Romania based on the establishment right and the freedom to provide services

Name of the enactment

Order No. 14/2009 of the Insurance Supervision Commission for application of the Norms on the insurance/reinsurance activity in Romania based on the establishment right and the freedom to provide services ("Order 14/2009")

Publication

Official Gazette of Romania, Part I, No. 569/14.08.2009

Entry into force

14 August 2009

Connections with other enactments

Law No. 32/2000 on the insurance and insurance supervision activity

Main provisions

The norms provided by Order 14/2009 regulate the manner in which insurers/reinsurers authorized in Member States of the European Union can carry out their activity in Romania based on (i) the establishment right or (ii) the

freedom to provide services. The main provisions of Order 14/2009 may be summarized as follows:

	Establishment right	Freedom to provide services
Manner of exercise	Branch	Directly
General conditions	Notice sent to the Insurance Supervision Commission ("ISC"), accompanied by a feasibility study and the claims settlement procedure	Notice sent to the ISC together with the claims settlement procedure
Special conditions	Mandatory insurance may be practiced only subject to approval by ISC. Certain provisions provided as per insurance categories (e.g. health insurance, car insurance, etc.)	
Change of information	To be communicated to the ISC within at most 30 days from the receipt of the approval from the authority in the state of origin.	To be communicated to the authority in the Member State of origin.
Other	The advertisement of the services of a (re)insurer established in Romania is conditional upon mentioning the company's name and legal form, the Member State of origin, the company's address, registered headquarters and the headquarters of the Romanian branch.	The activity may be started as soon as the ISC and the competent authority in the Member State of origin communicate to the insurer that they acknowledged its intention.

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2. Performance of the insurance/reinsurance intermediation activity in Romania based on the establishment right and the freedom to provide services

Name of the enactment	Order No. 15/2009 of the Insurance Supervision Commission for application of the Norms on the establishment right and the freedom to provide services in Romania by insurance/reinsurance intermediaries authorized and/or registered by a competent authority in a Member State of the European Union (“ Order 15/2009 ”)
Publication	Official Gazette of Romania, Part I, No. 569/14.08.2009
Entry into force	14 August 2009
Connection with other enactments	Law No. 32/2000 on the insurance and insurance supervision activity
Main provisions	<p>Order 15/2009 applies the norms on the manner in which insurance/reinsurance intermediaries authorized in another Member State of the European Union may carry out their activity in Romania based on (i) the establishment right or (ii) the freedom to provide services. In both cases, Order 15/2009 provides for the obligation to previously notify the competent authority in the Member State of origin, which shall communicate certain information to the ISC. The intermediary thus notified has the obligation to observe the Romanian law, but the ISC does not have the obligation to inform the former on the relevant legislation.</p> <p>The control exercised by the ISC is only indirect, i.e. if the intermediary does not observe the Romanian law, the ISC may ask it to remedy the situation. If the requested measures are not taken, the ISC shall inform the competent authority from the state of origin and, only if the measures taken thereby are inadequate or insufficient, it may apply penalties itself.</p>
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3. Norms concerning the insurers’ authorization

Name of the enactment	Order No. 16/2009 of the Insurance Supervision Commission, for the application of the Norms on insurers’ authorization (“ Order 16/2009 ”)
Publication	Official Gazette of Romania, Part I, No. 569/14.08.2009
Entry into force	14 August 2009
Connections with other enactments	<ul style="list-style-type: none">• Law No. 32/2000 on the insurance and insurance supervision activity, as further amended and supplemented (“Law 32/2000”);• Order No. 6/2007 of the Insurance Supervision Commission for the

Main provisions

application of the Norms on insurers' authorization ("**Order 6/2007**").

Order 16/2009 repealed Order 6/2007 and brought supplementations and amendments to the norms on insurers' authorization (hereinafter referred to as the "**Norms**"), especially with regard to the procedure of assessment by the Insurance Supervision Commission, with a view to grant the preliminary endorsement, of the significant persons and of the members of the insurer/reinsurer's executive management, as defined under Article 2 items 11 and 11¹ of Law 32/2000.

To this effect, those situations shall be taken into account for the last 10 years, to the extent relevant, such as, *inter alia*, the fact that the person was sanctioned or one of its authorizations or approvals was refused or withdrawn by a competent regulation and supervision authority in Romania or abroad, or was in another situation which, by its relevant elements, might bear negative effects on the image of the insurer where the person under discussion is nominated to exercise administration and/or management responsibilities.

The proof that there are no such cases shall be made based on a statement certified under the law or notarized by a notary public, which document is requested for the purpose of granting the preliminary endorsement for registration with the trade registry as insurer.

According to Order 16/2009, upon the assessment for granting the preliminary endorsement for registration with the trade registry as insurer, consideration shall also be given to whether the feasibility study provided and endorsed thereby relies on a realistic approach and reveals professionalism, resulting from the manner of presenting the insurance market and the incorporation of the organization and operation principles on prudential bases and of assessment of an insurer's risks.

Also, Order 16/2009 brings supplementations with regard to the preliminary endorsement conditions, to the effect that the significant persons and the members of the insurer/reinsurer's executive management must: (i) have graduated a form of higher education, (ii) provide to the Insurance Supervision Commission a statement certified under the law or notarized by a notary public, attesting that they are not subject to an interdiction to work in financial institutions and (iii) at least one of the managers, or of the members of the directorate, has to be a speaker of the Romanian language.

Order 16/2009 also amends Appendix No. 7 to the Norms, which contains the

conditions for occupying management positions within such an insurer. Hence, in the amended form of the Norms, the position as actuary and as manager of the life insurance activity or of the general insurance activity may be cumulated with the capacity as deputy manager, in the case of the unitary system, or member of the directorate, in the case of the dualist system.

Also, the persons appointed in management positions at the level of departments and assimilated thereto must have at least 3 years' experience in the insurance field, of which at least 2 years in the specialty they are going to manage, and not to hold this capacity in another legal entity, either Romanian or foreign, throughout their employment in such insurer.

According to Order 16/2009, a person that has to be previously granted the approval of the Insurance Supervision Commission may only exercise the prerogatives of the position for which he/she was proposed from the date when it has been granted the approval mentioned above. This provision also applies to the persons proposed to participate, as the case may be, in the board of directors, the board of supervision, the executive management or the directorate. The nonobservance of the abovementioned provisions may lead to penalties, as the case may be, on the company, the persons entitled to make the proposal and those that were proposed. The Insurance Supervision Commission may even decide, in consideration of the consequences of exercising the prerogatives of a position before being granted legal approval, to revoke the granted approval.

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Public Procurement and Concessions

Name of the enactment

Government Decision No. 827/2009 for the approval of the Norms on the specific procedure for drawing up and sending the application for ascertaining that a certain relevant activity is directly exposed to the competition on a market to which access is restricted ("GD 827/2009")

Publication

Official Gazette of Romania, Part I, No. 584/21.08.2009

Entry into force

21 August 2009

Connections with other enactments

Government Emergency Ordinance No. 34/2006 on the award of public procurement contracts, public works concession contracts and service concession contracts, approved, with amendments and supplementations, by Law 337/2006, as further amended and supplemented ("GEO 34/2006")

Connections with the
community legislation

- Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors;
- 2005/15/EC: Commission Decision of 7 January 2005 on the detailed rules for the application of the procedure provided for in Article 30 of Directive 2004/17/EC.

Main provisions

Thus, ascertaining that a certain relevant activity is exposed to the competition or not is established by the European Commission based on a notification/application made by the relevant contracting authority in this respect.

In the event that, according to the legal provisions in force, there is a regulatory authority acting in the field of the relevant activity carried out by the applicant contracting authority, the latter has the obligation to first send its request to the regulatory authority and ask the latter to issue a grounded opinion on the fact that the relevant activity which forms the object of the request is directly exposed to competition on a market with unrestricted access. Under such circumstances, the contracting authority will only send to the European Commission the request along with the opinion issued by the regulatory authority.

In addition, the contracting authority has the obligation to notify, within 5 days after the submission of the request to the European Commission, the said request to the National Authority for the Regulation and Monitoring of Public Procurement.

According to the enactment issued by the Government, the provisions of Article 248 paragraph (1) of GEO 34/2006 will apply to the benefit of the contracting authority under any of the following circumstances:

- The European Commission rendered a decision acknowledging that the relevant activity which was the object of the request is directly exposed to competition on a market with unrestricted access;
- After a three-month period, calculated from the first business day following the date on which the European Commission received the contracting authority's request, if during such time the European Commission did not pass any decision or announce any extension of the initial analyzed period;
- After a six-month period, calculated from the first business day following the date on which the European Commission received the

contracting authority's request, if during such time the European Commission announced an extension of the initial analyzed period but has not passed any decision after the extension.

Therefore, the contracting authority benefiting from the provisions of Article 248 paragraph (1) of GEO 34/2006 in the course of one or more of the relevant activities it carries out, has the right to award branch agreements related to said relevant activity/activities by applying internal proceedings of its own. The internal proceedings used by the contracting authority have to promote competition between business entities and guarantee transparency, equal treatment and non-discrimination against them.

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