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Legal Bulletin

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Banking Law

Name of the enactment	Regulation No. 6/2008 on the amendments in the status of Romanian credit institutions and Romanian branches of credit institutions of third parties ("**Regulation No. 6/2008**")
Publication	Official Gazette of Romania, Part I, No. 296/16.04.2008
Entry into force	16 April 2008
Connections with other enactments	Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy ("**G.E.O. No. 99/2006**")
Main provisions	The Regulation No. 6/2008 establishes the legal framework for the implementation of the changes occurring in the status of Romanian credit institutions as well as of the Romanian branches of third country credit institutions.

The enactment was passed in the context of adapting the secondary bank legislation to the amendments introduced by G.E.O. No. 99/2006 at the end of 2006.

In this context, mention should be made that the Regulation No. 6/2008 does not cover the amendments occurring in the status of the Romanian branches of credit institutions of other Member States carrying out their activity in Romania, which are governed by Articles 45-66 of G.E.O. No. 99/2006.

The amendments in the status of Romanian credit institutions as well as of the Romanian branches of third country credit institutions are structured in two large types:

- amendments that require the prior approval of the National Bank of Romania ("**N.B.R.**"), on one hand, and
- amendments that do not require the prior approval of the N.B.R., being subject only to the notification procedure.

The first category of amendments are the important ones in the existence of credit institutions and which refers, *inter alia*, to: completing the object of activity, the persons nominated to exercise administration and/or management positions, the financial auditor, opening branches in third countries. All these can be made

only upon N.B.R. approval.

All the other amendments, of lesser importance, can be made without the prior approval of the N.B.R., but they need to be notified thereto within 10 days as of their implementation.

Repealed enactments

The Regulation No. 6/2008 repeals Norm No. 11/2004 of the N.B.R. on the changes in the status of banks, issuers of electronic currency other than banks, savings banks for housing and Romanian branches of foreign credit institutions and the Norm No. 19/2002 of the N.B.R. on the changes in the status of credit co-operative organizations.

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Commercial Papers

1 Cheque

Name of the enactment

Government Emergency Ordinance No. 38/2008 amending and completing Cheque Law No. 59/1934 (the "**G.E.O. No. 38/2008**")

Publication

Official Gazette of Romania, Part I, No. 284/11.04.2008

Entry into force

11 May 2008

Main provisions

The main amendments made by the G.E.O. No. 38/2008 are as follows:

- the establishment of a standard for filling in cheques which is more detailed than the one required by the previous legal framework, and it also introduces detailed provisions which are necessary for the electronic processing of operations with cheques (the electronic processing of the cheque and sending the typed cheque in electronic form);
- introducing the requirement of explicitly mentioning the upstream in the place of the previously existing upstream presumption in the case of a signature on the obverse of the cheque (other than the signature of the person operating the draft);
- introducing the 15 days' term for presenting for payment the cheque issued and payable in Romania, under sanction of losing the right of action against the endorsers and warrantors;
- according to the new regulation, the cheque can be presented to be paid in original or in electronic processing (i.e. the electronic processing by the credit institution of the data contained in the

cheque);

- accepting a cheque for payment through electronic processing involves the existence of conventions or arrangements for payment between the credit institutions involved;
- the establishment of obligations and responsibilities for the credit institution which orders the payment of a cheque through electronic processing in the sense of checking the authenticity of the cheque;
- the time of reception of the electronically processed cheque is the time of presenting that cheque for payment;
- the refusal of the cheque sent to be paid through electronic processing is registered electronically.

The National Bank of Romania will pass norms for the application of the G.E.O. No. 38/2008 within 30 days after the entry into force thereof.

2 Bill of Exchange and Promissory Note

Name of the enactment	Emergency Ordinance No. 39/2008 for the amendment and completion of Law No. 58/1934 for the bill of exchange and the promissory note (the "**G.E.O. No. 39/2008**")
Publication	Official Gazette of Romania, Part I, No. 284/11.04.2008
Entry into force	11 May 2008
Main provisions	The main amendments made by the G.E.O. No. 39/2008 are as follows:

- the establishment of a regime for filling in the bill of exchange which is more detailed than the one required by the previous legal framework, and it also introduces detailed provisions necessary for the electronic processing of operations involving bills of exchange and promissory notes (electronic processing of the bill of exchange, or of the promissory note, and sending the instrument in electronic form);
- accepted bills of exchange and promissory notes can be presented for payment in original or by electronic processing (i.e. the electronic processing by the bank of the data contained on the cheque);
- the payment of an accepted bill of exchange or of a promissory note through electronic processing involves the existence of conventions or arrangements for payment between the credit institutions involved;

- the establishment of obligations and responsibilities for the credit institution which sends for payment such an instrument through electronic processing in the sense of checking the authenticity of that instrument;
- the time of receiving the electronically processed instrument is the time of presenting that instrument for payment;
- the refusal of the accepted bill of exchange or of the promissory note sent for payment through electronic processing is registered in electronic form.

The National Bank of Romania will pass norms for the application of the G.E.O. No. 39/2008 within 30 days after the entry into force thereof.

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Company Law

1 The Romanian Company Law

Name of the enactment	Government Emergency Ordinance No. 52/2008 for the amendment and completion of Company Law 31/1990 and for the completion of Trade Registry Law No. 26/1990 (**"G.E.O. No. 52/2008"**)
Publication	Official Gazette of Romania, Part I, No. 333/30.04.2008
Entry into force	30 April 2008
Connection with other enactments	Company Law No. 31/1990 (**"Law No. 31/1990"**) Trade Registry Law No. 26/1990 (**"Law No. 26/1990"**)
Connections with the Community law	• Directive 2005/56/EC of the European Parliament and of the Council on cross-border mergers of limited liability companies; • Directive 2007/63/EC of the European Parliament and of the Council amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies.
Main provisions	In the context of the European integration, Romania is currently under an obligation to transpose in its national legislation the provisions of the Community directives and regulations, including in the field of companies' activities. G.E.O. No. 52/2008 brings a number of amendments and completions to the provisions of Law No. 31/1990. In principle, the purpose of the above-mentioned enactment

was to introduce the provisions concerning the cross-border merger and the European company.

The main new provisions concerning the cross-border merger can be summarized as follows:

- the cross-border merger is defined as an operation by which:
  - one or more companies, among which at least two are governed by the legislation of two different Member States, are dissolved without going into liquidation and transfer their whole patrimony to another company in exchange of the distribution to the shareholders of the being acquired company/companies of shares in the acquiring company and, possibly, of a payment in cash of at most 10% of the nominal value of the shares thus distributed; or
  - several companies, among which at least two are governed by the legislation of two different Member States, are dissolved without going into liquidation and transfer their whole patrimony to a company which it incorporates, in exchange for the distribution to their shareholders of shares in the new company and, possibly, of a payment in cash of at most 10% of the nominal value of the shares thus distributed;
  - a company is dissolved without going into liquidation and transfers the aggregate of its patrimony to another company holding the aggregate of its shares or of other securities entitling to vote in the general meeting, provided that the payment in cash can exceed the mentioned value, if the legislation of at least one of the Member States of the companies participating in the merger or the new company allows this percentage to be exceeded;
- in principle, the procedure and rules for the completion of the merger are similar to those applicable to the merger between Romanian companies – e.g. as concerns the directors' report and the expert's report concerning the merger, the creditors' protection, the personnel's involvement, the opposition and the approval of the merger project, the effects of the merger, etc.;
- the competence for checking the legality of the merger, from a procedural perspective, is incumbent on the competent authorities of Romania if the legal entity resulting from the merger is a Romanian legal entity, and there is no need to meet cumulatively the conditions

provided by the two national laws applicable to the organic state of the companies involved.

Also, other material amendments and completions are brought to the already existing provisions of Law No. 31/1990, as follows:

- a notarized power-of-attorney is no longer needed in order to conclude documents for the disposal of the company's assets, regardless of whether such documents are notarized, to the extent the signatory's powers of attorney were duly granted by law, the constitutive act or the resolutions of the statutory bodies;
- the examination of the merger or split-up project and the experts' report thereon are no longer necessary, if all the shareholders or holders or securities entitling to vote decide so;
- it introduces a term of forfeiture concerning the initiation of the procedures for cancellation or for declaring the nullity of the merger or of the split-up, i.e. 6 months after the effective date;
- also, the procedures for cancelling or declaring the nullity of the merger or split-up cannot be initiated if the situation was rectified (i.e. within the 6 months' term mentioned above).

The amendments brought to Law No. 26/1990 by G.E.O. No. 52/2008 concern the extension of the delegated judge's competence in the field of the legality control concerning mergers, split-ups or relocations of the registered headquarters, and the registration or deregistration of companies established or which terminate their activity on this occasion, as well as establishing its competence in respect of the incorporation by merger of a European company or a European cooperative company in which a commercial company or a cooperative company – Romanian legal entity – is participating, as well as in the case of cross-border merger involving a Romanian commercial company or a European company headquartered in Romania. Other significant provisions of G.E.O. No. 52/2008 refer to the cross-border mergers in the case of Romanian companies or European companies headquartered in Romania, which own lands in Romania, the resulting company being a foreign one. Thus, if non-agricultural lands are involved, the operation can be made only within 5 years after Romania's accession to the EU, and if agricultural lands are involved, within 7 years after Romania's accession to the EU.

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2 Distribution of profit in state companies

Name of the enactment	Emergency Ordinance No. 49/2008 for the amendment and completion of Government Ordinance No. 64/2001 on the distribution of the profit in national enterprises, national companies and business entities whose share capital is held in full or in majority by the state, as well as in regies autonomes ("**G.E.O. No. 49/2008**")
Publication	Official Gazette of Romania, Part I, No. 330/25.04.2008
Entry into force	25 April 2008
Connections with other enactments	• Government Ordinance No. 64/2001 on the distribution of the profit in national enterprises, national companies and business entities whose share capital is held in full or in majority by the state, as well as in *regies autonomes* ("**G.O. No. 64/2001**"); • Company Law No. 31/1990 ("**Law No. 31/1990**").
Main provisions	G.E.O. No. 49/2008 was passed in view of the need to improve the solvability of credit institutions whose share capital is held in full or in majority by the state, an improvement which can be made through the continuous re-capitalization thereof, thus avoiding the decrease of the bank rating thereof as compared to other banks. In this sense, G.E.O. No. 49/2008 expressly and unconditionally exempts credit institutions whose share capital is held in full or in majority by the state from the obligation to distribute as dividends at least 50% of the book profit remaining after the profit tax was deducted, unlike national enterprises, national companies and business entities whose share capital is held in full or in majority by the state which benefit from this exemption only under certain circumstances. Also, pursuant to G.E.O. No. 49/2008, credit institutions whose share capital is held in full or in majority by the state can increase their share capital by using (capitalizing) the company's net profit during 2008-2013. G.E.O. No. 49/2008 amends the term within which national enterprises, national companies and business entities whose share capital is held in full or in majority by the state should pay the dividends, replacing the special term of 30 days at the date of the legal term for the submission of the balance sheet provided by GO 64/2001 by the general term provided by Law 31/1990, i.e. the one established by the general meeting of shareholders, but no later than 6 months after the approval of the annual financial statement related to the completed financial year.
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Criminal Law

Name of the enactment	Emergency Ordinance No. 53/2008 on the amendment and completion of Law No. 656/2002 for the prevention and sanctioning of money laundry, as well as for establishing measures for the prevention and fight against the financing of terrorist acts ("G.E.O. No. 53/2008")
Publication	Official Gazette of Romania, Part I, No. 333/30.04.2008
Entry into force	30 April 2008
Connections with other enactments	Law No. 656/2002 for the prevention and sanctioning of money laundry, as well as for establishing measures for the prevention and fight against the financing of terrorist acts ("**Law No. 656/2002**")
Connections with the Community law	• Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, as further amended and interpreted by Community acts during 2006-2008 ("**Directive 2005/60/CE**"); • Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds.
Main provisions	G.E.O. No. 53/2008, which amends and completes Law No. 656/2002, was passed in view of the obligations incumbent on Romania as a result of the undertakings contained in the Treaty of Accession to the EU and transposes Directive 2005/60/CE into the Romanian legislation. The most important amendments brought by G.E.O. No. 53/2008 are as follows: • the specific definition of the notions „real beneficiary" or „fictitious bank". Thus, the actual beneficiary is defined by G.E.O. No. 53/2008 as any individual who holds or ultimately controls the client and/or the individual in the name or on behalf of whom a transaction or an operation is performed directly or indirectly. "Fictitious Bank" means a credit institution or an institution which carries out an equivalent activity, registered in a jurisdiction where it does not have a physical presence, i.e. the management and administration of the activity and the records of the institution are not located in that jurisdiction, and which is not affiliated to a regulated financial group; • the introduction of three categories of measures required for knowing

the client base: standard, simplified and additional;

- the definition of the "politically exposed persons" and the identification of the situations where financial institutions and reporting entities have to apply to such persons additional measures for knowing the client base. The politically exposed persons are the persons who hold important public positions (for example, heads of states, members of the Parliament, European commissaries, Government members, etc.). In the case of such persons, financial institutions and the other reporting entities will apply additional measures for knowing the client base, but only in the case of business transactions or relations with politically exposed persons residing in another Member State or in the European Economic Community or in a foreign state;
- including as reporting persons of the ones who, before the passing of G.E.O. No. 53/2008, were not subject to reporting obligations, such as: administrators of private pension funds, marketing agents authorized to operate in the private pension system, providers of services for business entities or other entities, other individuals and legal entities trading goods and/or services against amounts in cash representing the equivalent of at least EUR 15,000;
- the clear delimitation of the authorities who are competent to check and control the manner of applying the relevant legislation, i.e.: prudential supervisory authorities, the Financial Guard, the management bodies of liberal professions, the National Office for Preventing and Fighting against Money Laundry. G.E.O. No. 53/2008 also establishes that the National Office for Preventing and Fighting Money Laundry and the National Bank of Romania are the authorities responsible for supervising the Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds.

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Fiscal Law

Name of the enactment

Government Emergency Ordinance No. 50/2008 for establishing a pollution tax for cars ("**G.E.O. No. 50/2008**")

Publication	Official Gazette of Romania, Part I, No. 327/25.04.2008
Entry into force	1 July 2008
Connections with other enactments	It repeals the provisions of Articles 214^1 – 214^3 of Fiscal Code Law No. 571/2003 (the "**Fiscal Code**")
Main provisions	G.E.O. No. 50/2008 sets forth the legal framework for establishing a pollution tax for cars, which tax constitutes revenue to the Environment Fund budget. The provisions of G.E.O. No. 50/2008 repeal and replace, as of 1 July 2008, the provisions of Articles 214^1 – 214^3 of Fiscal Code on special taxes for cars and vehicles (the infamous "first registration" tax). The pollution tax for cars, regulated by GEO 50/2008 (the "**Tax**") is due for the vehicles of categories M_1-M_3 and N_1-N_3, as defined in the regulations approved by an order of the Ministry of Public Works, Transports and Dwelling No. 211/2003 (i.e. vehicles having at least four wheels, conceived and built for the transport of passengers or wares). G.E.O. No. 50/2008 establishes a series of exceptions from Tax application, determined, in the main, by the destination of the car. The tax is calculated based on a formula in accordance to the cylinder capacity of the vehicle and the pollution norm thereof and is due, as the case may be, upon the first registration in Romania or upon the reinstatement of a vehicle in one of the circumstances provided by G.E.O. No 50/2008. The amount of the Tax is subject to a reduction which increases pro rata to the degree of deterioration of the vehicle; the reduction reaches 95% in the case of vehicles older than 15 years. The enactment provides for the possibility to dispute the Tax for the vehicles deteriorated to a larger extent than would have resulted by applying the legal discount. G.E.O. No. 50/2008 also provides the possibility to recover the residual value of the tax, for the case where the car is removed from the national car fleet. The residual value is equal to the value of the tax which would have been paid for the car concerned if it were registered upon the removal of the national car fleet.
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Public Finance

Name of the enactment	Emergency Ordinance No. 37/2008 on the regulation of financial measures in the budgetary field ("G.E.O. No. 37/2008"), as amended by Emergency Ordinance No.

	43/2008 for the amendment and completion of Government Emergency Ordinance No. 37/2008 on the regulation of financial measures in the budgetary field
Publication	Official Gazette of Romania, Part I, No. 276/08.04.2008
Entry into force	8 April 2008
Main provisions	G.E.O. No. 37/2008 was passed in order to meet the need to implement certain policies for diminishing budget expenses and to consider more prudently the budgetary deficit for the purpose of avoiding the risk of starting the procedure of excessive budgetary deficit. To fulfill the above-mentioned purpose, G.E.O. No. 37/2008 provides a series of special measures in relation to the public expenses, as follows: • Measures for reducing public expenses Such measures mainly refer to the prohibition of acquiring by public institutions and authorities such goods as immovable assets, cars, air conditioning equipments, furnishings, etc. The exceptions from the above-mentioned interdiction are expressly provided by G.E.O. No. 37/2008. • Measures concerning redistributions of funds in the budgets of main credit managers Such measures mainly refer to redistributions of amounts in the same type of budget or even changes in the structure of certain budgets (transfers from one budget to another, suspensions, diminutions, increases, etc.). • Measures in the field of monitoring certain categories of public expenses In this respect, G.E.O. No. 37/2008 introduces several reporting obligations regarding certain aspects, such as reporting the situations concerning investment programs, reporting information on the loans contracted as guaranteed by the state, the loans contracted with international financial institutions, etc. Also, G.E.O. No. 37/2008 amended certain enactments with impact on public finance, of which the Government Emergency Ordinance No. 196/2005 on Environment Fund must be mentioned.
Repealed enactments	Government Ordinance No. 1/2007 on the approval of revenue and expense budgets of the units reporting to, coordinated by or under the authority of

ministries, the other specialized bodies of the central public administration, as well as of the central public authorities, published in the Official Gazette of Romania, Part I, No. 30 of 17 January 2007, approved with amendments and completions by Law 176/2007, as further amended.

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Case Law

1 Corporate law

Decision

Decision No. LXII (62) of 24 September 2007 of the United Sections of the High Court of Cassation and Justice, published in the Official Gazette of Romania No. 276/08.04.2008

Relevant field

Suspending the exercise of the GMS resolution until the settlement of the action for cancellation of such resolution

Connections with enactments

Company Law No. 31/1990 (the "**Company Law**")

Content of the decision

The United Sections of the High Court of Cassation and Justice established that Article 133 para. (3) of the Company Law means that the injunction rejecting the request to suspend the provisions of a GMS resolution can be challenged by an appeal.

The intervention of the supreme court is grounded on the non-unitary practice in interpreting and applying Article 133 para. (3) of the Company Law, which regulates the possibility to file an appeal against the injunction ordering the suspension of the performance of the GMS resolution.

In applying this legal text, some courts stated that the appeal filed against the injunction rejecting the request to suspend the execution of the GMS resolution is inadmissible. In support of this opinion, it was underscored that the provisions of Article 133 para. (3) of the Company Law derogate from the ordinary law, i.e. Article 582 para. (1) of the Code of Civil Procedure, being a special law expressly providing the possibility to file the appeal only against the injunction admitting the request for suspending the execution of the GMS resolution.

On the contrary, other courts stated that an appeal can be filed also against the injunction rejecting the request for suspending the execution of the GMS resolution.

The supreme court upheld that the latter courts interpreted and applied correctly the provisions of the law, and showed that the restrictive mention concerning the

possibility to file an appeal against the decision to suspend the execution cannot be considered to be limitative as long as it denies the principle of symmetry in challenge procedures, a principle particular to the Romanian trial law.

The decision of the High Court of Cassation and Justice is mandatory on courts after its publication in the Official Gazette (8 April 2008).

2 Criminal trial law

Decision	Decision No. LVII (57) of 24 September 2007 of the United Sections of the High Court of Cassation and Justice, published in the Official Gazette of Romania No. 283 of 11 April 2008
Relevant field	The complaint against the prosecutor's measures or acts or based on the prosecutor's orders, other than the prosecutor's resolutions or injunctions for non-prosecution
Connections with other enactments	Code of Criminal Procedure
Content of the decision	The High Court of Cassation and Justice pronounced its decision in relation to the interpretation and application of Article 278^1 of the Code of Criminal Procedure, establishing that the complaint against the measures or acts taken by the prosecutor or based on the latter's orders, other than the prosecutor's resolutions or injunctions for non-prosecution, is inadmissible. The intervention of the supreme court is grounded on the non-unitary practice in the interpretation and application of Article 278^1 of the Code of Criminal Procedure. The High Court of Cassation and Justice upheld that the free access to justice (guaranteed by Article 21 of the Constitution) could not be considered to be limited in the case of a rigorous application of the provisions under Article 278^1 of the Code of Criminal Procedure, since this right consists in the possibility to resort to the court structures by using means enabling justice to be done under the law. This involves the observance of the framework regulated for the exercise of the right to file a complaint before the judge against the prosecutor's resolutions or injunctions for non-prosecution. The decision of the High Court of Cassation and Justice is mandatory for the courts as of its publication in the Official Gazette (11 April 2008).
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