

# Legal Bulletin

December 2007

Chamber of Commerce	1
Civil Procedure	2
Consumers' Protection	4
Credit Institutions	9
Energy	10
Intellectual Property	12
Intra-Community Trade	14
Labor Law	14
Legal Regime of Minor Offenses	17
Personal Data Protection	18
Public Debt	19
Taxation	20

December 2007

## Legal Bulletin

### Chambers of Commerce

Name of the enactment	Law No. 335/2007 concerning the Romanian chambers of commerce (“ <b>Law 335/2007</b> ”)
Publication	Official Gazette of Romania, Part I, No. 836/06.12.2007
Entry into force	9 December 2007
Main provisions	<p>The chambers of commerce system comprises: (i) county chambers of commerce and the chamber of commerce of Bucharest City (“County Chambers”); (ii) the Romanian Chamber of Commerce and Industry (the “National Chamber”); (iii) bilateral chambers of commerce (“bilateral chambers”).</p> <p>The central and local public administration authorities are under an obligation to provide, free of charge, in accordance with the law, upon the request of county chambers, all the public information required for the exercise of their prerogatives.</p> <p>County chambers are under an obligation to provide, free of charge, to the central or local public administration authorities, upon request, all the information of the field of activity, requested in accordance with the legal provisions or as agreed under a protocol.</p> <p>Only one chamber of commerce can operate in each county as well as in Bucharest.</p> <p>The manner of using the state budget subsidies by the chambers of commerce is controlled by the Court of Accounts.</p> <p>County chambers contribute to partly cover the expenses for the operation of the National Chamber.</p> <p>The National Chamber is the rightful successor of the Romanian Chamber of Commerce and Industry, and is regulated by Decree-Law 139/1990, as further completed.</p> <p>The Court of International Commercial Arbitration is a permanent arbitration institution, without legal personality, and is attached to the National Chamber.</p> <p>The regulation for organization and operation of the Court of International Commercial Arbitration, like the college thereof, is approved by the management</p>

College of the National Chamber.

The president and the College of the Court of International Commercial Arbitration are proposed by the president of the National Chamber and approved by the management College of the National Chamber.

The rules of procedure of the Court of International Commercial Arbitration are proposed by the president of the Court and approved by the college thereof.

The norms regarding the arbitration fees and the arbitrators' fees are approved by the management College of the National Chamber, upon proposal by the College of the Court of International Commercial Arbitration.

The arbitration fees are meant for covering the expenses related to the activity of solving the litigations, the payment of the arbitrators' fees and providing documents for such, the secretary work expenses and other expenses required for the operation of the Court of International Commercial Arbitration.

Bilateral chambers of commerce are set up upon the initiative of business entities, according to the provisions of Government Ordinance No. 26/2000 on associations and foundations, approved, with amendments and completions, by Law 246/2005, and acquire legal personality upon their registration in the associations and foundations registry. There can be no two or more bilateral chambers in Romania for the same states.

Repealed enactment

Decree-Law 139/1990 concerning the chambers of commerce and industry in Romania

Author

[radu.ticleanu@tuca.ro](mailto:radu.ticleanu@tuca.ro)

## Civil Procedure

Name of the enactment

Government Decision No. 1527/2007 for the approval of the prior Theses of the draft Code of Civil Procedure

Publication

Official Gazette of Romania, Part I, No. 889/27.12.2007

Entry into force

27 December 2007

Connections with other enactments

This enactment establishes the main institutions to be regulated by the new Code of Civil Procedure.

Connections with the Community legislation

Upon the drafting of the new Code of Civil Procedure, the following Community enactments were taken into consideration:

- Directive 2000/35/EC of the European Parliament and of the Council of

29 June 2000 on combating late payment in commercial transactions;

- Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims;
- Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;
- Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure;
- Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.

#### Main provisions

The new Code of Civil Procedure will expressly regulate the principles of the civil trial.

Substantive amendments in competition matters will be established. For instance, courts of law will rule on small claims, tribunals will be the only competent mainly for ruling on cases in first instance, the Courts of Appeal will mainly rule on appeals and the High Court of Cassation and Justice will become the second appeal court of ordinary law.

In respect of the subpoena procedure and of communicating procedural deeds, such amendments are brought as to ensure a speedy development of the civil trial. To this end, it is provided that procedural deeds can be communicated by the court by electronic e-mail as well, or by any other means which can ensure the communication of the text and the confirmation of its receipt.

The procedure of notifying the court will be made under more restrictive conditions. For instance, the new Code of Civil Procedure will establish a prior administrative control for checking the content and form requirements as concerns the claim for legal action. The refusal of the party to comply with the obligations established by the court in this stage will result in the cancellation of the introductory claim by means of a judgment issued in the council chamber.

The cases will be tried in observance of the principle of continuity of the court panel. In addition, the enactment will regulate new means of evidence such as written documents stored on IT devices, copies on microfilms. Moreover, the new Code of Civil Procedure will strictly limit the possibility of adjourning the cases,

thus to avoid their pending for an unreasonable term.

The main amendments related to challenge procedures refer to the increase of the term for filing appeal or second appeal from 15 to 30 days, as well as the widening of the scope of subjects who can file a second appeal upholding the law to the High Court of Cassation and Justice.

For the purpose of unifying the legal practice, the new enactment will regulate, besides the second appeal upholding the law, a new mechanism that can be used for this purpose. This mechanism will allow the notification upon request or *ex officio* of the High Court of Cassation and Justice by the judge vested with a case pending before the last instance court for the purpose of solving a law matter on which the courts issued divergent decisions.

In terms of arbitration, the specific regulation will undergo amendments mainly related to the criteria for distinguishing arbitration litigations and to the form of the arbitral convention.

New regulations will be introduced in respect of the forced enforcement, which will give rise to the executor's right to issue judgments of enforcement for some of the measures ordered, which judgments can be challenged by means of a complaint filed with the enforcement court. Another substantive amendment in this field will refer to the extension of the time-bar term for the right to request the forced enforcement from 3 to 5 years.

The new Code of Civil Procedure will also regulate other special procedures in addition to those established by the current one, which procedures are currently governed by special enactments. This category includes the divorce and the order for payment.

Furthermore, the new enactment will also refer to certain issues related to trials in which foreign law elements are involved. In this respect, a procedure for the recognition and enforcement in Romania of foreign decisions will be regulated.

Author

[ioana.gelepu@tuca.ro](mailto:ioana.gelepu@tuca.ro)

## Consumers' Protection

Name of the enactment

Law No. 363/2007 on combating unfair business-to-consumer commercial practices and the harmonization of the regulations with the European legislation concerning consumers' protection ("Law 363/2007")

Publication

Official Gazette of Romania, Part I, No. 899/28.12.2007

Entry into force	31 December 2007
Connections with other enactments	<p>The package of laws in the field of consumers' protection, including also the following legal enactments:</p> <p>Law No. 296/2004 on consumers' code ("<b>Law 296/2004</b>")</p> <p>Government Ordinance No. 21/1992 on the protection of consumers ("<b>GO 21/1992</b>")</p>
Connections with the Community law	<p>Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ("<b>Unfair Commercial Practices Directive</b>")</p> <p>Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts</p> <p>Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours</p> <p>Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts</p> <p>Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees</p> <p>Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises</p>
Main provisions	<p>Title I of Law 363/2007, which transposes the provisions of the Unfair Commercial Practices Directive, regulates the definition and interdiction of certain unfair practices, while Title II brings a number of amendments to several enactments in the field of consumers' protection.</p> <p>According to the legal texts, unfair commercial practices are those practices which:</p> <ul style="list-style-type: none"><li>• are contrary to the requirements of the professional diligence;</li><li>• distort or are likely to distort essentially the economic behavior of the average consumer whom they reach or whom they are meant for or of</li></ul>

the average member of a group.

Unfair commercial practices are classified as *deceptive practices (deceptive actions or omissions)* and *aggressive practices*.

Deceptive practices are, according to Law 363/2007, those commercial practices which involve untrue information, or are misleading or may be misleading for the average consumer, so that, in both cases, they either determine or may determine the consumer to make a decision which he would not make otherwise, even if the information is actually accurate in respect of one or more of the elements established by law (features of the product, price, etc.).

Deceptive omissions are those commercial practices which, when presenting the state of facts to the consumer, leave out a material piece of information and, consequently, determine or are likely to determine the average consumer to make a decision which he would not make otherwise.

Aggressive commercial practices are those which, when presenting the state of facts and taking into account all the features and circumstances, materially limit or are likely to materially limit the liberty to choose or the behavior of the average consumer, through harassment, constraint, and, consequently, determine or are likely to determine the average consumer to make a decision which he would not make otherwise.

Appendix 1 contains a list, for exemplification purposes, of some unfair commercial practices.

All the unfair commercial practices, as regulated by Law 363/2007, are prohibited and their use constitutes a minor offense sanctioned by a fine of RON 3,000 – 30,000. In addition to the fine, the complementary sanction can be applied of suspending the activity until the cease of the unfair commercial practice. The National Authority for Consumers' Protection, and the units under its authority, may order actions for the purpose of ceasing the unfair commercial practices.

Title II of Law 363/2007 brings a number of amendments to certain enactments in the field of consumers' protection. Among these, please find below a review of the most important ones.

In respect of distance contracts, pursuant to the amendments brought to GO 130/2000, traders can deliver products / provide services to consumers without any prior order from the latter, but, in this case, the consumers are not forced to pay any consideration, except by their express consent. Also, the distance contracts for

which the contracting parties choose the law applicable to the contract to be the law of a state which is not a member of the European Union, in case such contract has close connections with the territory of Romania or of other Member States, will be governed by the provisions of GO 130/200, to the extent that such provisions are more favorable to the consumer.

In line with the above, amendments have also been brought to GO No. 85/2004 on consumers' protection in the execution and performance of distance contracts concerning financial services.

In the field of trading tourism services, the amendments brought to GO 107/1999 mainly consider the widening of the scope of cases in which travel agencies are exonerated from liability for the proper performance of the obligations undertaken in the contract. The new situations considered are:

- when the non-performance of the obligations is caused by an event which neither the travel agency nor the supplier or provider of services, in spite of their efforts, could foresee or avoid;
- when the non-performance of the obligations is caused by a third party which has no connection with the supply of the services provided in the contract, and the causes of the non-performance of the obligations are unpredictable and unavoidable.

In the situation set out under letter a) above, as well as in case of the occurrence of force majeure events, as such are defined by GO 107/1999, although the provider is exonerated from liability in respect of its contractual obligations, it has the legal obligation to promptly grant assistance to the consumer who is in a difficult position.

In respect of the regime of abusive clauses, the amendments brought to Law No. 193/2000 are meant to establish legal criteria according to which the abusive nature of a contractual clause is evaluated. Such criteria take into consideration:

- the nature of the products or of the services which form the object of the contract upon the conclusion thereof;
- the factors that determined the conclusion of the contract;
- other clauses of the contract or of other contracts on which it depends.

Also, a provision was introduced according to which Law No. 193/2000 is applicable even if the parties to a contract determined the applicable law to be the law of a state which is not a member of the European Union, provided that



such contract has close connections to the territory of Romania or of other Member State and Law No. 193/2000 sets forth provisions more favorable to the consumer.

Moreover, amendments have been brought in respect of the regulation of certain abusive clauses. Thus, the law considers that the clause according to which the trader is entitled to unilaterally amend the clauses of the contract, without a grounded reason stated in the contract, is abusive. However, the clauses pursuant to which the suppliers of financial services reserve the right to change the interest rate or the value of other fees for financial services without notifying the consumers, are not considered abusive, if (i) there are solid grounds in this respect; (ii) the trader undertakes the obligation to inform the contracting parties on the amendment as soon as possible, and (iii) the contracting parties have the liberty to terminate the contract. Also, the clause according to which the trader reserves the right to unilaterally amend the clauses of a contract with undetermined duration, is not considered abusive, but the trader has the obligation to inform the consumer by means of a prior notice, so that the latter may have the possibility to terminate the contract.

According to the law, the clauses for the adjustment of the price are not abusive, provided that the method by means of which the prices vary is described in explicit terms.

Moreover, the clauses based on which the suppliers of financial services reserve the right to unilaterally terminate a contract concluded for an undetermined period, for grounded reasons and without sending a prior notice to the consumer, are not considered abusive if the supplier undertakes to immediately inform the other contracting party.

Some of the abusive clauses exemplified in the appendix to Law No. 193/2000 will not be considered abusive if they are contained in contracts which have as purpose transactions of securities, financial instruments and other products or services, if the price of the contract is related to the fluctuations of the stock exchange or of the stock exchange index, or of a rate of exchange on the financial market, which the seller cannot control, or in the contracts concluded for the purchase or sale of currency, traveler's cheques, international payment orders issued in foreign currency or other international payment instruments.

The amendments brought to Law No. 449/2003 on the sale of products and guarantees associated therewith mainly concern the application thereof to cases when the parties to a contract determined the applicable law to be the law of a

state which is not a member of the European Union, provided that the relevant contract has a close connection with the territory of Romania or of other Member States and that Law 193/2000 sets forth provisions more favorable to the consumer.

Author

[bogdan.halcu@tuca.ro](mailto:bogdan.halcu@tuca.ro)

## Credit Institutions

Name of the enactment

Regulation No. 11/2007 on authorizing Romanian credit institutions and the Romanian branches of third country credit institutions (“**Regulation 11/2007**”)

Publication

Official Gazette of Romania, Part I, No. 873/06.12.2007

Entry into force

6 December 2007

Main provisions

Regulation 11/2007 of the National Bank of Romania (“**NBRR 11/2007**”) regulates the authorization procedure and requirements and the documentation to be submitted to the National Bank of Romania (“**NBR**”) for the authorization of banks, real estate savings and credit banks, mortgage credit banks, issuers of electronic currency and Romanian credit corporations (“**Credit Institutions**”), as well as the Romanian branches of third country credit institutions.

The procedure for the authorization by NBR of credit institutions comprises two steps: a) approval of the incorporation of the credit institutions and b) authorization of the operation of the credit institution.

For each of these two steps, NBRR 11/2007 sets out the documentation to be submitted to the NBR for the purpose of acquiring the approval for the incorporation, and for the purpose of acquiring the authorization for the operation of the credit institutions.

Chapter II of NBRR 11/2007 sets forth provisions concerning the authorization of Romanian banks, as follows:

- general requirements (name, scope of business, interdictions in relation to the persons having the capacity of shareholder, director, manager, member of the supervision board, etc., criteria for the evaluation of shareholders and persons nominated for ensuring the administration and/or management of banks),
- the documentation required for acquiring the approval for the incorporation of banks and
- the documentation required for acquiring the authorization for the

operation of banks.

Chapters III – VII of Regulation 11/2007 set forth provisions concerning: (i) the authorization of Romanian real estate savings and credit banks, (ii) the authorization of Romanian mortgage credit banks, (iii) the authorization of Romanian electronic currency issuers, (iv) the authorization of credit corporations and (v) the authorization of Romanian branches of third country credit institutions.

Repealed enactments

- NBR Norm No. 10/2004 on the authorization of banks, mortgage credit banks, electronic currency issuers, other than banks, of real estate savings houses and Romanian branches of foreign credit institutions
- NBR Norms No. 7/2000 on the authorization of credit corporations

Author

[serban.paslaru@tuca.ro](mailto:serban.paslaru@tuca.ro)

## Energy

Name of enactment

Law No. 346/2007 on certain measures for ensuring safety in the gas supply (“**Law 346/2007**”)

Publication

Official Gazette of Romania, Part I, No. 838/07.12.2007

Entry into force

10 December 2007

Main provisions

For the purpose of ensuring an adequate level of safety in the gas supply, Law 346/2007 defines the role and the responsibilities of gas authorities and domestic operators in approving and applying the required measures in this field.

Thus, Law 346/2007 provides for the establishment – within 30 days as of its entry into force – of a non-permanent inter-ministry commission without legal personality, named the Coordination Commission, for drafting, on a yearly basis, the Step Plan for emergency situations and for endorsing and monitoring the measures required for ensuring safety in gas supply.

Emergency cases, as defined under Law 346/2007, are those unpredictable situations which can result, at national level, in incongruities between the demand and supply of gas on the domestic market, caused by at least one of the following circumstances:

- major decrease of the supply by more than 20% of the imported gas quantities;
- major decrease of the supply by more than 20% of the gas quantities

from the domestic generation, caused by accidents;

- occurrence of extremely low temperatures throughout the country or in important areas around the country, for long periods of time, which lead to excessive gas consumption.

The step plan for emergency cases is submitted to be approved by Government decision and is communicated to the European Commission.

The actions ordered in accordance with the provisions of this Step Plan are mandatory and prevail over the contractual arrangements and the specific gas regulations throughout the duration of the emergency cases.

Law 346/2007 also introduces the public service obligation in the gas sector for all gas license holders as well for all natural gas generators.

In the emergency cases notified, domestic gas suppliers and generators have the obligation to make available the gas quantities required for ensuring the consumption of certain categories listed by the law.

During the cold season and in emergency cases, gas suppliers cannot order the suspension of gas supply for failure to pay the invoices in due time, except for unpredicted situations of technical nature, for those categories of consumers expressly provided by law.

For the same purpose of ensuring the safety of gas supply, the operator of the National Gas Transportation System is under an obligation, according to Law 346/2007, to perform interconnections with the similar systems of the neighbor countries. To this effect, the law allows the cooperation with another Member State of the European Union, including the execution of bilateral contracts for the use of transportation facilities and/or storage of gas from the relevant state.

Author

[miruna.badea@tuca.ro](mailto:miruna.badea@tuca.ro)

## Intellectual Property

Name of enactment

Law No. 350/2007 on utility models (“**Law 350/2007**”)

Publication

Official Gazette of Romania, Part I, No. 851/12.12.2007

Entry into force

11 March 2008

Connections with other enactments

Law No. 64/1991 on invention patents

Paris Convention for the protection of industrial property

## Main provisions

Paris Convention for the protection of intellectual property ratified by Romania in 1968 provides that, in addition to invention patents, trade names, trademarks, etc., the protection of industrial property is also applicable to utility models. Before the endorsement of Law 350/2007, the protection of utility models was not regulated in Romania.

Moreover, as provided in the presentation of grounds issued by the Government, there is a practical need for regulating the protection of utility models, because there are some inventions involving relatively little inventive activity which, for lack of a special regulation, could not be granted protection.

The utility model refers to a technical invention which cannot be protected by patents according to the provisions of Law No. 64/1991 on invention patents, due to the fact that it does not involve an inventive activity. In this respect, the utility model protects technical inventions, provided that they are new, that they exceed the level of mere professional skill and that they are applicable in the industrial field.

The utility model acquires protection by means of registration with the State Office for Inventions and Trademarks (“OSIM”). The right to the utility model belongs to the inventor or his legal successor.

The law allows the applicants who filed requests for registration of an invention with OSIM to transform that request into a request for registration of a utility model in the following situations:

- throughout the procedure for examination of the request for the patent until the closure of the technical preparations for the publication of the mention of the decision to grant the invention patent or reject the request for the patent;
- within three months as of the publication by OSIM of a decision for the cancellation of the invention patent it remains final and irrevocable on the ground of no inventive activity.

This transformation does not result in the termination of the procedure for examination of the request for the patent, if the applicant does not expressly request so.

Also, a request for the registration of a utility model can be transformed into a request for the registration of an invention, except when said request for

registration of the utility model resulted from the transformation of a request for an invention patent.

The duration of the protection of the utility model is of 16 years and can be extended for two successive periods of two years each; the duration of the protection cannot exceed 10 years.

The right to the utility model can be transferred under Law 64/1991 on invention patents and under the regulation to be issued for the application of Law 350/2007. In addition, the utility model can form the object of a guarantee interest or of the forced enforcement.

The decisions made by OSIM in relation to the registration of the utility model can be contested before OSIM in writing and supported by grounds by the applicant or by the title-holder of the utility model, within two months as of the communication. The contestations are solved by a re-examination commission formed within OSIM. The decisions of the latter can be challenged in court.

Registered utility models can be cancelled throughout the protection period, in cases expressly provided by law. The requests for cancellation are solved by a re-examination commission formed within OSIM. The decisions of the latter can be challenged in court.

The law provides for the possibility to register utility models at international level. Thus, an international request where Romania is a designated state can be continued in Romania, and, to this end, the applicant has to open the national phase within 30 months as of the date of the international submission or as of the priority date, if a priority was invoked.

The requests for international registration of utility models can also be filed with OSIM, as receiving office.

Author

[bogdan.halcu@tuca.ro](mailto:bogdan.halcu@tuca.ro)

## Intra-Community Trade

Name of enactment

Order No. 747/2007 of the president of the National Statistics Institute on the Intrastate value thresholds for collecting statistics information for the intra-Community trade of goods in 2008 ("**Order 747/2007**")

Publication

Official Gazette of Romania, Part I, No. 872/20.12.2007

Entry into force

20 December 2007

Main provisions	<p>Order 747/2007 establishes the value thresholds of commercial swaps between a Romanian business entity and business entities of the EU Member States the exceeding of which will result in the Romanian entity's obligation to fill in and communicate to the National Statistics Institute the Intrastate statement for 2008.</p> <p>The Intrastate value thresholds established for 2008 are as follows: RON 900,000 for intra-Community exports of goods, and RON 300,000 for intra-Community imports of goods.</p>
Repealed enactments	Order No. 2/2007 of the president of the National Statistics Institute establishing the Intrastate value thresholds for collecting statistics information on the intra-Community trade of assets in 2007

Author

[ciprian.timofte@tuca.ro](mailto:ciprian.timofte@tuca.ro)

## Labor Law

### 1. The public pension system

Name of enactment	Order No. 1019/2007 of the Minister of Labor, Family and Equal Chances for the amendment of the Norms of application of Law No. 19/2000 on the public pension system and other social insurance rights, as further amended and completed, approved by Order no. 340/2001 of the Minister of Labor, Family and Equal Chances (" <b>Order 1019/2007</b> ")
Publication	Official Gazette of Romania, Part I, No. 831/05.12.2007
Entry into force	5 December 2007
Connections with other enactments	Law No. 19/2000 on the public pension system and other social insurance rights (" <b>Law 19/2000</b> ")

Main provisions	<p>According to the amendments brought by Order No. 1019/2007, employers, for their own employees, and the institutions that operate the payment of unemployment rights, for unemployed persons, have the obligation to submit to the territorial pension house a rectifying statement if they find errors in the statement concerning the nominal record of employers and of the payment obligations to the social insurance state budget ("<b>nominal statement</b>").</p> <p>For situations where there are amendments concerning the revenues contained in the nominal statement, by retroactive granting of pecuniary rights for which contribution is owed, no rectifying statement is to be submitted, except for cases where the pecuniary rights concerned have been granted based on final and irrevocable court decisions, and for the cases where such decisions order the</p>
-----------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

professional reinstatement of certain persons, for which cases rectifying statements for each month are made.

Order 1019/2007 completes the Norms for the application of Law 19/2000 in the sense that it provides specifications on the social insurance agreement and on the social insurance statement.

According to such specifications, the social insurance agreement, and the social insurance statement, constitute debt instruments and become enforceable as soon as the budgetary debt becomes due.

## **2. The minimum gross salary at country level**

Name of the enactment Government Decision No. 1507/2007 for determining the minimal gross basic salary for country level guaranteed to be paid ("**GD 1507/2007**").

Publication Official Gazette of Romania, Part I, No. 877/20.12.2007

Entry into force 20 December 2007

Connections with other enactments Law No. 53/2003 – Labor Code ("**Labor Code**")

Main provisions According to GD 1507/2007, starting 1 January 2008, the minimal gross basic salary for country level guaranteed to be paid is established to a monthly RON 500, for a full-time work schedule of an average 170 hours per month, i.e. RON 2.941 lei/hour.

Starting 1 July 2008, the minimal gross basic salary for country level will be increased to RON 540/month, i.e. RON 3.176/hour. This increase will be operates provided that the main economic indicators for the state budget of 2008 are achieved, i.e. the increase in the gross domestic product, the inflation target, as well as the level work productivity.

According to Article 159 para. (2) of the Labor Code, the employer cannot negotiate and establish basic salaries in the individual employment agreement below the minimal gross basic salary per hour at country level.

## **3. New social contributions quotas**

Name of the enactment Law No. 387/2007 – the law concerning the state social insurance budget for 2008 ("**Law 387/2007**")

Publication Official Gazette of Romania, Part I, No. 901/31.12.2007

Entry into force 3 January 2008



Connections with other enactments

Law No. 388/2007 – the state budget law for 2008

Law No. 19/2000 on the public pension system and other social insurance rights (“**Law 19/2000**”)

Main provisions

According to Law 387/2007, for the period from 1 January 2008 to 30 November 2008, the quotas of the contribution to the social insurance budget remain unchanged, and have the same amount as in 2007, namely:

- for normal work conditions 29%;
- for extraordinary work conditions 34%;
- for special work conditions 39%.

Starting 1 December 2008, the quotas of the contribution to the social insurance budget will be reduced, as follows:

- for normal work conditions 27,5%;
- for extraordinary work conditions 32,5%;
- for special work conditions 37,5%.

The quota of the individual contribution to the social insurance budget will remain the same as in 2007, i.e. 9/5%, regardless of work conditions.

As concerns the other social contributions, the following contribution quotas are established for 2008, according to Law 387/2007:

- the contribution due by employers to the social insurance budget for unemployment according to Article 26 of Law 76/2002, as further amended and completed, is of 1% for January-November and 0.5% starting December;
- the individual contribution due to the social insurance budget for unemployment according to Article 27 of Law 76/2002, as further amended and completed, is of 0.5%;
- the contribution due to the state budget for unemployment, according to Article 28 of Law 76/2002, as further amended and completed, by the persons insured based on the insurance agreement for unemployment is of 1.5% for January-November and 1% starting December;
- the contribution due by the employer to the guarantee Fund for the payment of salary debts according to Article 7 para. (1) of Law

200/2006, as further amended, is of 0.25%.

The gross average salary used as basis for the social insurance state budget of 2008 is of RON 1,550, as compared to RON 1,270 in 2007.

Author

[mihai.anghel@tuca.ro](mailto:mihai.anghel@tuca.ro)

## Legal Regime of Minor Offenses

Decision

Decision No. XXII of 19 March 2007 of the United Sections of the High Court of Cassation and Justice, published in the Official Gazette of Romania No. 833 of 5 December 2007

Relevant field

Nullity of the minutes for ascertaining the minor offense

Connections with other enactments

Government Ordinance No. 2/2001 on the legal regime of minor offenses, approved by Law 180/2002 with amendments

Content of the decision

The United Sections of the High Court of Cassation and Justice established that the non-observance by the ascertaining agent of the requirement to inform the offender on his right to file objections against the content of the ascertaining deed and to register such objections distinctly results in the relative nullity of the minutes for the ascertaining of the minor offense.

The intervention of the supreme court is grounded on the non-unitary practice in interpreting and applying Article 16 para. (7) of GO 2/2001. Thus, some courts considered that the non-observance of the offender's right to file objections is sanctioned by the absolute nullity of the minutes. Therefore, the applicant does not need to prove an injury when he invokes this ground for nullity.

Other courts considered that the nullity is a relative one and, therefore, it can only be invoked if the party sustained an injury which can only be removed through the cancellation of that deed. This interpretation was adopted by the supreme court as well.

The decision of the High Court of Cassation and Justice is mandatory for the courts as of its publication in the Official Gazette (5 December 2007).

Author

[ionut.serban@tuca.ro](mailto:ionut.serban@tuca.ro)

## Personal Data Protection

Name of the enactment

Decision No. 100/2007 of the President of the National Authority for Supervising the Processing of Personal Data, on determining the cases that require the notification of the processing of certain personal ("Decision 100/2007")

Publication	Official Gazette of Romania, Part I, No. 823/03.12.2007
Entry into force	3 December 2007
Connections with other enactments	Law No. 677/2001 on persons' protection in relation to the processing of personal data and the free circulation of such data (" <b>Law 677/2001</b> ")
Main provisions	<p>Decision No. 100/2007 was issued in the application of the provisions of Article 22 para. (9) of Law No. 677/2001, according to which the National Authority for Supervising the Processing of Personal Data (the "<b>Supervision Authority</b>") has the competency to determine cases where the notification of processing personal data is not required.</p> <p>According to Decision 100/2007, the notification of processing personal data is not required in the following cases, for exemplification purposes:</p> <ul style="list-style-type: none"><li>• when the processing of personal data is made by the compartments/competent persons of public and private entities, for the purpose of complying with the obligations provided by law, for the organization and performance of the entity's own current activity of economic-financial and administrative management;</li><li>• when the processing of the personal data concerning the company's own employees is made for the purpose of subscribing shares in the interest of the employees;</li><li>• when the processing of the personal data concerning individuals registered in contests or examinations is made for the purpose of occupying vacant positions;</li><li>• when the processing of personal data contained in the curriculum vitae form sent by the own accord of individuals, is made by public and private entities, acting as potential employers;</li><li>• when the processing of the personal data is made for mass media, literary, or artistic, purposes exclusively.</li></ul> <p>The cases of personal data processing that requires the notification of the Supervision Authority provided by Decision 100/2007 are additional to the one provided under Article 22 para. (2) of Law 677/2000, according to which the notification is not required if the sole purpose of the processing is to keep a registry meant by law for keeping the public informed and open to consultation by the public in general or by any person who proves a legitimate interest, provided that the processing is limited to the data</p>

which is strictly necessary for keeping the abovementioned registry.

Author

[mihai.anghel@tuca.ro](mailto:mihai.anghel@tuca.ro)

## Public Debt

Name of the enactment

Government Emergency Ordinance No. 141/2007 for the amendment and completion of Government Emergency Ordinance No. 64/2007 on public debt

Publication

Official Gazette of Romania, Part I, No. 873/20.12.2007

Entry into force

20 December 2007

Connections with other enactments

It amends and completes Government Emergency Ordinance No. 64/2007 on public debt.

Main provisions

Government Emergency Ordinance No. 141/2007 completes the legal framework concerning public debt, by introducing new rules, as follows:

- loans for financing the deficit and re-financing the public debt will be contracted based on certain specific procedures, according to the type of instrument chosen, which will be provided by the norms of application of this emergency ordinance.
- the purposes for which the Government is authorized to undertake in the name and on behalf of the state obligations such as the government public debt were completed by that of sustaining the payment balance according to Regulation No. 322/2002 of the European Union Council for establishing a long-term financial assistance mechanism for the payment balances of the member states;
- as an exception, main credit release authorities can undertake obligations such as the government public debt for leasing acquisitions, based on a Government decision, only if the Ministry of Economy and Finance accepts the undertaking of the government public debt by them under leasing contracts, based on the analysis of the costs and risks, ensuring the observance of the objectives and of the principles of the strategy for managing the government public debt;
- the reimbursable funds contracted from international financial bodies meant for the funding of the state budget deficit will be approved by law, not by a Government decision, as is currently done;
- an additional source of payment for the service of the government

public debt was introduced, namely the amounts entered in the State Treasury in the account of loans contracted by credit release authorities under state guarantee or contracted by the Ministry of Economy and Finance and sub-loaned to them and taken over to be managed by the Ministry of Economy and Finance according to GEO 64/2007;

- in addition to the types of payment previously established by Article 7, the debts resulting from the loans granted from the general account of the State Treasury will have the same legal regime as tax debts and are recovered according to the legislation in force concerning the collecting thereof;
- the limits of the fine established for the non-observance of the reporting obligations by the beneficiaries of loans constituting public debt have been increased, and are set from RON 10,000 to RON 30,000;
- the provisions of Article 14 on the prerogatives of the Ministry of Economy and Finances have been amended, in the sense that additional competences have been established; likewise, completions have been brought to the provisions on the categories of loans that can be contracted starting from 2008, by the main credit release authorities, as well as the amendment of the contracts in force in the sense of observing such amendments.

Repealed enactments

Para. (1) of Article 3 from the 2<sup>nd</sup> section of chapter I of Government Ordinance No. 41/2005 on the regulation of certain financial measures

Author

[patricia.enache@tuca.ro](mailto:patricia.enache@tuca.ro)

## Taxation

- 1. Issues concerning the procedure of registering the contracts concluded between Romanian legal entities and non-resident legal entities or individuals**

Name of the enactment

Order No. 2310/2007 on the procedure of registering the contracts concluded between Romanian legal entities and non-resident legal entities or individuals (“Order 2310/2007”)

Publication

Official Gazette of Romania, Part I, No. 858/13.12.2007

Entry into force

13 December 2007

Main provisions	<p>Order 2310 repeals and completely replaces Order 1415/2007, which had the same object of regulation.</p> <p>Order 2310 maintains Romanian the obligation of legal entities to register the contracts concerning any activity concluded with foreign individuals or legal entities, but expressly mentions that the contracts concerning activities carried out outside the Romanian borders are not to be registered.</p> <p>As compared to the previous regulation, the term for the registration of the contracts or of the amendments brought thereto was extended from 13 to 30 days. Moreover, Order 2310 provides that it is also applicable to the contracts which are under way as at its entry into force, but in this case the term runs as of the entry into force.</p> <p>The initial regulation under order 1415 did not provide for the sanction for the non-observance of the obligations imposed, which aspect was remedied by Order 2310. The latter provides that the non-compliance with the obligation to register the contracts is sanctioned in accordance with Article 219 para. 2 letter d) of the Code of Fiscal Procedure, i.e. <b>a fine of RON 1,000 to 5,000.</b></p>
Repealed enactments	Order 1415/2007 on the procedure of registering the contracts concluded between Romanian legal entities and non-resident foreign legal entities or individuals
Author	<a href="mailto:andreea.lisievici@tuca.ro">andreea.lisievici@tuca.ro</a>
Name of the enactment	<b>2. Recent amendments of the Tax Code</b> Government Emergency Ordinance No. 155/2007 for the amendment of para. (4) and (5) of Article 263 of Law No. 571/2003 on the Tax Code (" <b>GEO 155/2007</b> ")
Publication	Official Gazette of Romania, Part I, No. 884/21.12.2007
Entry into force	1 January 2008
Connections with other enactments	Law No. 571/2003 on the Tax Code, as further amended and completed
Connections with the Community law	Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures
Main provisions	The emergency of passing this ordinance resulted from the need to correct the manner of transposing appendix no. 1 of Directive 1999/62/EC on the charging of vehicles regulated by Article 263 para. (4) and (5) of Law No. 571/2003 on the Tax Code, according to the obligations undertaken towards the European

Commission.

The amendments brought by GEO 155/2007 consist in establishing different taxing grids for the vehicles registered in Romania and engaged solely in domestic transport operations, to which the transit period obtained by Romania in the accession to the EU negotiations apply and, respectively, for the Romanian vehicles which also carry out international transport activities and which have to pay the minimal taxes established by Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures.

For the purpose of establishing the tax for the fiscal year 2008, GEO 155/2007 introduces the obligation of road transport undertakings and operators to issue an affidavit, by 31 March 2008, for each vehicle having the weight provided under Article 263 para. (4) and (5) of Law No. 571/2003 on the Tax Code, as to whether or not the vehicle performed or is to perform, within the same year, at least one international road transport operation.

Author

[miruna.badea@tuca.ro](mailto:miruna.badea@tuca.ro)




Contact details:

Victoriei Square  
4-8 Nicolae Titulescu Avenue  
America House, West Wing, 8<sup>th</sup> Floor  
Sector 1  
011141 Bucharest  
Romania

 (40-21) 204 88 90

 (40-21) 204 88 99

 office@tuca.ro

 www.tuca.ro

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.

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)

Cristina Metea, Senior Associate (cristina.metea@tuca.ro)