

Legal Bulletin

February 2010

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Employment and Social Security Law

Name of the enactment	Government Emergency Ordinance No. 4/2010 regulating certain social security measures for 2010 (“ GEO No. 4/2010 ”)
Publication	Official Gazette of Romania, Part I, No. 93 of 10 February 2010
Entry into force	10 February 2010
Connections with other enactments	<ul style="list-style-type: none">• Law No. 53/2003 – Labor Code (“Labor Code”);• Law No. 76/2002 on the unemployment security system and stimulation of employment (“Law No. 76/2002”);• Law No. 19/2000 on the public pension system and other social security rights (“Law No. 19/2000”);• Government Emergency Ordinance No. 158/2005 on leaves and health social security indemnities (“GEO No. 158/2005”).
Main provisions	<p>GEO No. 4/2010 adopted a series of social security measures for 2010, as a result of the current economic conditions, which are similar to those adopted throughout 2009 by Law No. 268/2009 approving Government Emergency Ordinance No. 28/2009 regulating certain social security measures. The social security measures considered by the Government shall apply in the context of suspension of the employees’ individual employment agreement in cases of temporary, total or partial cessation, including temporary decrease in the employer’s activity, particularly for economic, technological, structural or similar reasons.</p> <p>Therefore, throughout the temporary cessation of the employer’s activity, but not longer than 90 days, the employer and the employees shall be exempted from the payment of social security contributions due for the indemnity of minimum 75% of the base salary, as per the job position held.</p> <p>Furthermore, the indemnities from which the employees benefit throughout the temporary cessation of the employer’s activity shall not be included in the salary income and shall not be taxable for a maximum period of 90 days.</p> <p>The period of temporary cessation of activity for which the employees whose individual employment agreements are suspended and the employers thereof are exempted from the payment of social security contributions due according to</p>

law, shall represent a subscription period without the payment of the contribution. This period shall be taken into consideration upon the establishment of the 24-month term preliminary to the registration date of the application for unemployment indemnity and to the fulfillment of the minimum subscription period in the unemployment security system.

The social measures provided under GEO No. 4/2010 shall apply starting from February 2010, but not later than 31 December 2010. In order to benefit from the social measures implemented by the Government for 2010, employers shall have the obligation to file an affidavit on the temporary cessation of activity without the termination of the work relations with the employees, particularly for economic, technological, structural or similar reasons with the territorial labor inspectorate where they are headquartered.

Author

mariana.magherusan@tuca.ro

Environmental Law

Name of the enactment

Government Emergency Ordinance No. 3/2010 amending and supplementing Waters Law No. 107/1996 (the “**Emergency Ordinance**”)

Publication

Official Gazette of Romania, Part I, No. 114 of 19 February 2010

Entry into force

19 February 2010

Connections with other enactments

Waters Law No. 107/1996

Connections with the Community legislation

- Directive 2000/60/EC Directive 2000/60/EC of the European Parliament and of the Council, dated 23 October 2000, establishing a framework for the Community action in the field of water policy (“**Directive 2000/60/EC**”);
- Directive 2007/60/EC of the European Parliament and of the Council, dated 23 October 2007 on the assessment and management of flood risks (“**Directive 2007/60/EC**”).

Main provisions

The Emergency Ordinance was adopted due to an impending initiation of two infringement procedures against Romania by the European Commission. More precisely, Romania failed to comply with its obligation to accurately and fully transpose Directive 2000/60/EC, and to transpose Directive 2007/60/EC.

Consequently, the Emergency Ordinance brings a series of amendments and supplements to the Waters Law, the most relevant concerning:

- Public authorities, individuals and legal entities shall have access to

the information representing the National Fund of Hydrologic and Water Management Data, on the basis of a procedure established by the central public authority in the waters field. The use by such persons of such data contained in the National Fund of Hydrologic and Water Management Data for commercial purposes shall be permitted for a fee only;

- Obtainment of the site endorsement form and the water management endorsement shall condition the issuance by the authorities of the public administration of the building permit for the works to be performed on or in connection with waters;
- The water management endorsement shall also be required in case of the closedown of certain objectives built on or in connection with waters;
- The water management authorization may be temporarily cancelled, with no compensation being awarded, if the holder fails to comply with the legal obligations it has towards the manager of the water resource;
- Holders of dams and storage reservoirs, and of flooding valves, with or without dams, shall have to draft operation regulations and warning and alarming plans and to comply with the provisions thereof.

Author

olga.cobasneanu@tuca.ro

Fiscal Law

Name of the enactment

Decision of the Chamber of Fiscal Consultants No. 8 of 17 February 2010 approving the Norms of certifying the annual fiscal statements of legal entity taxpayers, except for statements whose auditing is mandatory ("**Decision No. 8/2010**")

Publication

Official Gazette of Romania, Part I, No. 111 of 18 February 2010

Entry into force

18 February 2010

Connections with other enactments

- Law No. 571/2003 on the Fiscal Code
- Government Ordinance No. 92/2003 on the Fiscal Procedure Code

Main provisions

Decision No. 8/2010 provided the norms regarding the certification of annual fiscal statements of legal entity taxpayers, except for statements whose auditing is mandatory, hereinafter referred to as "profit tax statements".

For profit tax statement certification purposes, the companies which do not fall under the auditing obligation shall have to conclude a written agreement with a fiscal consultant. The latter has no duties with respect to keeping the companies accounting, but shall be provided by the representatives of the company with the draft annual profit tax statement together with an affidavit from the company's representatives regarding the compliance of the accounting entries and policies with the Romanian reference accounting system in force, whose standard form is provided under Appendix No. 1 to Decision No. 8/2010.

Upon the written request of the fiscal consultant, the company shall have to provide him/her with documents and information enabling the verification of the entries of the annual tax profit statement subject to certification. If such documents are confidential, the fiscal consultant shall make a statement agreeing to keep the confidentiality of the information he/she has access to.

The fiscal consultant shall randomly check the treatment of the economic operations reflected in the financial and accounting documents and entered in the annual profit tax statement, taking into account the operations exceeding a certain material threshold only. The materiality threshold shall be established by the very fiscal consultant, who shall base his/her decision on his/her professional judgment, on analytic procedures and on the general comprehension of the company and economic environment where such operates.

The object of verification of the annual profit tax statement shall have to include at least the items provided under Title II "Profit Tax" of Law No. 571/2003 on the Fiscal Code (*i.e.* taxable income, non-taxable income, items similar to income and expenses, revaluations, nondeductible expenses and expenses with a limited deductibility, indebtedness degree, provisions, depreciation, incurred expenses/income, etc.), excluding verification of the policy/documentation regarding transfer prices, commercial and accounting policies applied by the company. After having verified the annual profit tax statement, the fiscal consultant shall issue two documents: (1) the certification report to be submitted to the company, and (2) the certification note, which shall accompany the profit tax statement upon submission to the relevant fiscal authority. Certification may be made with or without objections, which issue has to be expressly specified in the certification note whose content is provided under Appendixes 2 (for natural person fiscal consultant) and 2A (for legal entity fiscal consultant).

Author

andreea.lisievi@tuca.ro

Real Estate

Name of the enactment	Government Decision No. 119/2010 amending and supplementing Government Decision No. 717/2009 approving the norms for the implementation of "First House" Program ("GD No. 119/2010")
Publication	Official Gazette of Romania, Part I, No. 117 of 22 February 2010
Entry into force	22 February 2010
Connections with other enactments	<ul style="list-style-type: none">• Government Decision No. 717/2009 approving the norms for the implementation of "First House" Program ("GD No. 717/2009");• Government Emergency Ordinance No. 60/2009 on certain measures for the implementation of "First House" Program ("GEO No. 60/2009");
Main provisions	<p>GD No. 119/2010 brings major amendments to "Prima Casă" Program (the "Program"), particularly with respect to (i) the categories of housings which may be purchased or built through the programs, (ii) the value of secured financings (iii) the securities established by the Program's beneficiaries for the Romanian State.</p> <ul style="list-style-type: none">• Categories of eligible housings <p>An important supplement brought by the new regulation concerns a circumstantiation of the categories of housings which may be purchased or built through the Program, express reference being made to the possibility that such may be built through the programs of the National Housing Agency (ANL).</p> <p>Besides completed housings, housings under construction and future housings, to be constructed by individual beneficiaries, GD No. 119/2010 inserts two other categories of housings: (i) new housings, intended to be purchased subsequent to completion and (ii) housings to be constructed through ventures without legal personality established by a minimum number of 7 natural person beneficiaries. As to the new housings or future housings, irrespective whether such shall be constructed by individual beneficiaries or by ventures without legal personality, the new regulation provides a special condition, <i>i.e.</i> that such must have been constructed or must be constructed, as the case may be, on the basis of a construction permit issued subsequent to the entry into force of GD No. 119/2010.</p> <p>Housings which may be purchased through the Program are also circumstantiated from an energetic performance standpoint; it is established that, upon the entry into force of the provisions of Law No. 372/2005 on the energetic</p>

performance of housings, housings shall have to fall under one of A to C classes of energetic efficiency

- **Value of guaranteed financings**

Unlike the provisions of GD No. 717/2009 establishing an EUR 60,000 threshold for the guaranteed financing of housings through the Program irrespective of the housing's category, GD No. 119/2010 distinctively establishes the value of guaranteed financings, as per the age of the housings, as follows:

- In the case of completed housings, and non-completed housings, the guaranteed financing shall cover (i) maximum 95% of the purchase price provided under the sale-purchase promissory agreement, if the price is lower than or equal to EUR 60,000 or (ii) maximum EUR 57,000 if the price is higher than EUR 60,000;
- In the case of new or future housings to be constructed by individual beneficiaries, the guaranteed financing shall cover (i) maximum 95% of the price, if such is lower than or equal to EUR 70,000 or (ii) maximum EUR 66,500, if the price is higher than EUR 70,000; and
- In the case of the housings to be constructed by ventures without legal personality, the loan to be granted to each natural person partner shall cover (i) a maximum of 95% of the amounts provided under the housing construction agreements if the housing's construction value is lower than or equal to EUR 75,000 or (ii) a maximum of EUR 71,250, if the housing's construction value is higher than EUR 75,000.

Although GD No. 119/2010 expressly repeals the provisions regarding the unilateral crediting promise and the security promise, in order to prevent potential difficulties related to the enforcement of applicable norms in time, it is maintained the possibility of issuing a new security promise if a promissory sale-purchase agreement was concluded prior to the entry into force of GD No. 119/2010, in which case the issuance shall be performed subject to the conditions of the norms set for the implementation of the program in force upon the conclusion of such promissory agreement.

- **Securities granted for housings purchased or built through the Program**

An important provision is that, unlike the previous norms, GD No. 119/2010

regulates the granted securities on a differentiated basis, as per the housing categories of the Program.

In the case of (i) completed, (ii) non-completed, undergoing different construction stages and (iii) new housings, intended for purchase subsequent to completion, such shall be guaranteed by a legal 1st rank mortgage established in favor of the Romanian State, which shall be valid throughout the full term of the financing. In addition, it is provided the obligation to register an interdiction to alienate the housings with the land book (*N.B.* unlike the former regulation which was providing a sale interdiction only) for a 5-year term, and an interdiction to encumber them in any way whatsoever throughout the full term of the financing.

As to securing future housings to be built either by individual beneficiaries, or by ventures without legal personality, besides the security modalities provided above, GD No. 119/2010 also inserts a legal 1st rank mortgage established over the lands owned by the beneficiary/beneficiaries in favor of the Romanian State, valid until the beneficiary complies with all its obligations towards the financing party. Again, an interdiction to alienate the land for a 5-year term and an interdiction to encumber in any way whatsoever shall be registered with the land book.

Furthermore, GD No. 119/2010 sets the threshold for the securities which may be issued in compliance with the legal regulations for 2010 at the value of EUR 700 million.

Author

razvan.mircea@tuca.ro

Trade Registry Formalities

Name of the enactment

Government Decision No. 83/2010 approving the Regulation for organization and operation of the National Office of the Trade Registry and offices of the trade registry attached to tribunals (“GD No. 83/2010”).

Publication

Official Gazette of Romania, Part I, No. 109 of 18 February 2010

Entry into force

18 February 2010

Connections with other enactments

- Companies Law No. 31/1990;
- Law No. 26/1990 on the trade registry;
- Law No. 359/2004 on the simplification of formalities upon registration with the trade registry of individuals, family associations and legal entities, fiscal registration thereof, and authorization of operation of

legal entities;

- Methodological norms on the fashion the trade registries are kept, entries are made and information is communicated;
- Government Decision No. 113/2010 approving the fees and rates for the operations performed by the National Office of the Trade Registry and offices of the trade registry attached to tribunals, published in Official Gazette of Romania, Part I No. 130 of 25 February 2010.

Main provisions

The Regulation for organization and operation of the National Office of the Trade Registry and of the offices of the trade registry attached to tribunals, adopted by GD No. 83/2010, provides the fashion in which the territorial organization of the National Office of the Trade Registry shall be performed and the main functions of the National Office of the Trade Registry and of the offices of the trade registry attached to tribunals.

According to the provisions of the Regulation, the main function of the trade registry kept by the offices of the trade registry attached to tribunals is to register all legal entities subject to the obligation of becoming registered, and of authorized individuals, individual undertakings and family undertakings performing economic activities, and having registered headquarters/professional headquarters in the jurisdiction of the tribunal.

Registration formalities provided by law are made through the trade registry. Registrations, data and registered documents shall be opposable to third parties since their performance or publication in the Official Gazette of Romania, Part IV, Part VII, or, as the case may be, on the website of the National Office of the Trade Registry, subject to the conditions of law. In this respect, if the law does not provide otherwise, offices of the trade registry attached to tribunals shall mediate, at the request and on the expense of the applicant, the submission for publication purposes of the registrations and documents in the Official Gazette of Romania.

A novelty brought by the Regulation is the establishment of the Committee for analysis and unitary practice of the offices of the trade registry attached to tribunals. The Committee shall issue standpoints on the legal issues noticed by the offices of the trade registry attached to tribunals, and shall provide them to all offices.

GD No. 113/2010 approving the fees and rates for the operations performed by the National Office of the Trade Registry and the offices of the trade registry

attached to tribunals adopted the rates and terms to be applied to the operations performed by the National Office of the Trade Registry and by the offices of the trade registry attached to tribunals.

Repealed enactments

Order of the Minister of Justice No. 3062/C/2008 approving the Regulation for the Organization and Operation of the National Office of the Trade Registry and of the offices of the trade registry attached to tribunals.

Author

gabriel.vasii@tuca.ro



Contact details:

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

 (40-21) 204 88 90

 (40-21) 204 88 99

 office@tuca.ro

 www.tuca.ro

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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)

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