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Legal Bulletin

February-March 2012

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Arbitration

Name of the enactment	Resolution No. 17/2012 of the Chamber of Commerce and Industry of Romania approving the Arbitral Proceedings Rules of the Court of International Commercial Arbitration ("**CCIR Rules**")
Publication	Official Gazette of Romania, Part I, No. 97 of 7 February 2012
Entry into force	7 February 2012
Main provisions	The new CCIR Rules governing the arbitral proceedings conducted before the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania (the "**Court of Arbitration**") bring a set of amendments as compared to the former 2010 CCIR Rules. One of the most important amendments is that the parties are no longer entitled to appoint the members forming the arbitral tribunal in disputes referred for institutional arbitration conducted by the Court of Arbitration. Thus, arbitrators shall be exclusively appointed by Appointing Authority that shall appoint arbitrators as per the main claim's object and case complexity. The authority to appoint the arbitrators shall belong to a member of the Court Arbitration in Plenum appointed for a 7-year term, which may be renewed. Another major amendment brought by the CCIR Rules concerns the language of the international arbitration. Unlike the former arbitration rules which permitted the parties and arbitral tribunal to decide the language of the proceedings, currently, the international arbitral proceedings shall be conducted in Romanian when the venue of the international arbitration is Romania, unless all arbitrators are foreign and they reach an agreement as to the language to be used. Other amendments of the CCIR Rules concern: • Replacement of the concepts of civil and commercial disputes by the concept of arbitral disputes; • Deciding the arbitral tribunal's jurisdiction depending on the venue where the arbitral claim is registered, unless otherwise expressly agreed by the parties to this effect; • Arbitral tribunal's obligation to inquire the parties at each hearing on

whether they reached an agreement or not;

- Respondent's acceptance of the Arbitral Court's jurisdiction further to the submission of a request for arbitration may no longer be implicit, but express and recorded in writing;
- Arbitration's settlement term was reduced to 5 months for domestic disputes, and 10 months for international disputes. Unreasonably exceeding this term may entail the liability of the tribunal's members;
- As to domestic disputes, the parties may no longer establish venues for arbitration other than the venue of the Arbitration Court's headquarters belonging to the relevant chamber of commerce;

In case of ad-hoc arbitration, the parties' arbitration agreement shall have to expressly include the phrases "ad-hoc arbitration" or "voluntary arbitration", any other wording rendering the arbitration institutional.

Repealed enactments	The rules of arbitral proceedings of the Court of International Commercial Arbitration passed on 29 March 2010, as amended and supplemented
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Public Finances

Name of the enactment	Law No. 28/2012 on amending and supplementing enactments with a view to enhancing the process of capitalizing seized assets or, as the case may be, assets taken over and included in the state private property ("**Law No. 28/2012**")
Publication	Official Gazette of Romania, Part I, No. 189 of 22 March 2012
Entry into force	25 March 2012
Connections with other enactments	• Government Ordinance No. 14/2007 on regulating the method and conditions for capitalizing assets taken over and included in the state private property pursuant to the law ("**GO No. 14/2007**"); • Criminal Procedure Code.
Main Provisions	The amendments implemented by Law No. 28/2012 facilitate the procedure of capitalizing seized assets or assets taken over as state private property, regulated under GO No. 14/2007 and the Criminal Procedure Code. In principle, movable assets in possession of the competent bodies or of the holder, in relation to which restitution was ordered by final and irrevocable court ruling, or by prosecutor's ordinance, shall be returned to the owner or the

rightful person. Law No. 28/2012 describes in detail the restitution procedure, and the fact that the assets are deemed to be abandoned if the owner or the rightful person fails to collect the respective assets within 3 months as of its notification by the holder.

Furthermore, Law No. 28/2012 regulates in detail the possibility to capitalize movable assets in relation to which seizure was ordered, throughout the trial meant to establish the lawfulness of the seizure minutes, when:

- There is a risk that, in time, until the final and irrevocable settlement of the litigation, the value of the seized assets should decrease significantly;
- Seizure relates to assets whose storage, maintenance or conservation require disproportionate expenses as compared to the asset's value;
- Upon request of the assets' owner or with the consent thereof.

The amendments implemented in relation to the Criminal Procedure Code relate to the special cases of capitalization of assets seized throughout the criminal trial, prior to the issuance of a final ruling, with the owner's consent, or in case such consent has not been obtained, in the situations below:

- Within one year as of the date when seizure was set out, the value of the seized assets decreased significantly, by at least 40% as compared to their value the pre-judgment measure was ordered;
- There is the risk that the guarantee term shall expire, or seizure order was applied in relation to live animals or birds;
- The seizure order considered inflammable or oil products;
- The seizure order was passed in relation to assets whose storage or maintenance required disproportionate expenses as compared to the asset's value.

Furthermore, if the owner was not identified, the vehicles or means of transportation in relation to which the seizure order was established may be capitalized as follows:

- When they were used in any way to commit an offence;
- If one year or more lapsed as of the date the measures were established in relation to such assets.
- Moreover, Law No. 28/2012 details the capitalization procedure, by

reference to the stage of the criminal trial when such procedure occurs, and the means of challenging same.

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Corporate Law

1 Formalities regarding the document attesting to the right of use over the premises having the purpose of registered headquarters

Name of enactment

Order of the Minister of Justice and President of the National Agency for Fiscal Administration No. 492/C/205 approving the Procedure for requesting and issuing, via electronic means, of the certification on the registration of the document attesting to the right of use over the premises having the purpose of registered headquarters and the certificate for the premises having the purpose of registered headquarters ("**Order No. 492/C/205**")

Publication

Official Gazette of Romania, Part I No. 148 of 6 March 2012

Entry into force

6 March 2012

Main provisions

Order No. 492/C/205 simplifies the administrative procedures for the registration of the document attesting to the right of using the premises having the purpose of registered headquarters ("**Document related to the premises**") and issuance of the proof of registration of the Document related to the premises (the "**Proof**") and of the certificate for such premises (the "**Certificate**"), upon the constitution of the company or relocation of the headquarters.

According to the new procedure, the request for registration of the Document related to the premises shall be submitted together with the registration request or the registration of the change of the headquarters, with the trade registry office located in the administrative area of the company's headquarters.

Furthermore, following the registration of the request with the Trade Registry, the Trade Registry shall provide the relevant tax authority – city, town, commune or Bucharest District public finance administration, where the future registered headquarters is located – with the request on the Document related to the premises and accompanied by such document, via electronic mail.

The tax authority shall take any of the following actions:

- Shall issue and send by electronic mail to the sender office the Proof and Certificate the same day, or in the first half of the working hours in the immediately following day, depending on the moment of

receiving the request;

- Shall immediately notify the sender office of the Trade Registry if the documentation is incomplete or illegible, and if, for other reasons, the Proof and the Certificate cannot be issued; should the company, through its legal representative or the person empowered by the latter, be the sole entity that may remove the reasons for which the above documents may not be issued, the Trade Registry office shall order the proper measures.

Finally, both the submission of the Document related to the premises provided in support of the submitted request by the Trade Registry office to the relevant tax authority, and the release and transmission of the Proof and Certificate by the relevant tax authority to the Trade Registry office, are not conditional upon the registration of the Document related to premises with the tax authority for calculating the income tax.

Repealed enactments	Order of the President of the National Agency for Fiscal Administration No. 2112/2010 approving the Procedure for the issuance, via electronic means, of the Proof on the registration of the document attesting to the right of using the premises intended as a registered headquarters and the Certificate for the premises intended as registered headquarters.
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2 Amendments brought to the Companies Law

Name of enactment	Government Emergency Ordinance No. 2/2012 amending and supplementing Law No. 31/1990 on business companies ("**GEO No. 2/2012**")
Publication	Official Gazette of Romania, Part I, No. 143 of 2 March 2012
Entry into force	2 March 2012
Connections with other enactments	Companies Law No. 31/1990 ("**Companies Law**")
Main provisions	The main amendments brought to the Companies Law mainly concern the companies' merger and spin off process. Please find below the most important such amendments. The draft of a report detailing the in-kind contributions shall not be necessary in the following cases: • In case of business companies established by merger or spin off;

- In case of the capital increase performed by merger or spin off;
- For making cash payments to the shareholders of the absorbed or spun-off company, if applicable,
- If the merger or spin off project was examined by an independent appraiser.

Shareholders that are against the merger/spin off may exercise the right to withdraw within 30 days as of the publication of the merger/spin off draft, as per the requirements laid down under the Companies Law.

GEO No. 2/2012 expressly provides that the shareholders of general partnerships, limited partnerships or limited liability companies may withdraw in the cases provided under Article 134 (currently only applicable to joint-stock companies); on the other hand, should the withdrawal of the shareholders from such types of companies occur in the situations provided under the articles of incorporation or with the approval of all the other shareholders, the right to withdraw may be exercised within 30 days as of the publication of the decision of the general meeting of shareholders in the Official Gazette of Romania; the costs incurred with evaluating the rights of the withdrawn shareholder shall be borne by the company.

The merger or spin off draft to be submitted to the trade registry office related to each company involved in the process shall have to be accompanied, in addition to the statement of the company ceasing to exist further to the merger or spin off on how it decided to extinguish its debts, by a statement on the method of publication of the merger or spin off project; such provisions shall also apply to cross-border mergers.

The company may decide to replace the publication of the merger/spin off draft in the Official Gazette of Romania by publication on its own website, for a continuous period of at least one month prior to the extraordinary general meeting deciding on the merger/spin off, which period shall not expire prior to the end of such general meeting. In such case:

- The company shall have to secure the technical requirements for a continuous and free-of-charge publication of the documents provided by law;
- The company shall have to attest to the continuity of the publication; and

- The company shall have to make sure that its website is secure and that the posted documents are accurate;
- The trade registry office where the company is registered shall publish the merger or spin off draft on its website, free of charge;
- Publication by means of own website shall also apply in the case of cross-border mergers.

The challenge filed by the creditors of the companies participating in the merger or spin off may be dismissed by the court, among other cases, when the creditor in question fails to attest that the satisfaction of its receivable is put to risk by the performance of the merger.

The directors of the spun off company as well as of the every company implicated in the merger, must inform the general assembly of its company, and the directors of the other companies part of the operation, so that the latter to be able to inform, at their turn, the general assembly of their companies, of any major change in the assets and liabilities that has occurred between the moment the merger / spin off project has been prepared and the moment the general assemblies have to decide on the respective project.

By unanimous decision of the shareholders and of the holders of other securities entitling to votes in each company participating in the merger or spin off: the preparation of the directors' report substantiating the merger/spin off draft, and the submission by the directors of the information on the major changes in the assets and liabilities of the companies involved in the merger, and spin off, respectively, may both be waived.

In the case of certain mergers by absorption and spin offs, certain obligations concerning the reports that have to be prepared and the contents thereof, the obligation to provide the shareholders with the financial statements, and certain provisions concerning the liability of the companies' directors and consequences of mergers and spin offs on the shareholders, respectively, shall not apply any longer.

At the same time, the preparation of the financial statements of the companies involved shall no longer be required: (i) if all the shareholders and holders of other titles entitling to voting rights of all the companies involved in the merger/spin off decide so; or (ii) if the companies involved in the merger/spin off publish half-yearly reports and provide same to the shareholders, according to the laws of the capital market. Moreover, the company involved in merger or spin off

shall not have the obligation to provide the shareholders, at its headquarters, with the documents provided under Article 244 (1) (*i.e.* the merger/spin off draft, directors' report and/or informative note, annual financial statements and administration reports for the past 3 financial years, the financial statements provided under the previous paragraph, censors'/financial auditor's report, experts' report) if they are published on the company's own website for a continuous period of at least one month prior to the general meeting to be held with a view to making a decision on the merger/spin off.

Upon request and on a free-of-charge basis, the shareholders may obtain copies or excerpts of the above documents (including by electronic mail), save for the case when the shareholders have the possibility to download and print such documents from the company's website.

A legislative novelty is the possibility that the approval of the merger by the general meeting of shareholders not be necessary, in the case of certain types of mergers by absorption and spin offs and, if certain requirements provided by law are met, respectively:

- In case of a merger by absorption, whereby one or several companies are spun off without being wound up and transfer(s) all assets and liabilities to another company holding all their shares or other titles entitling to votes in the general meeting, if: (i) each of the companies involved in the merger observed the publication requirements for the merger draft at least one month prior to the becoming effective; for a period of one month prior to the date when the operation becomes effective, all shareholders of the absorbing company were given the possibility to examine, at the company's headquarters or on the website, the merger draft, annual financial statements and administration reports for the past 3 financial years and the financial statements prepared not sooner than the first day of the third month prior to the date of the merger or spin off draft, if the latest financial statements were prepared for a financial year ended more than 6 months before this date; (iii) one or several shareholders of the absorbing company holding at least 5% of the subscribed share capital, have the possibility to request a convening of the general meeting to decide on the merger;
- Should the absorbing company in a merger by absorption hold at least 90%, but not all the shares or other securities entitling to the right to

vote in the companies' meetings, the approval of the merger by the general meeting of the absorbing company shall not be necessary if the requirements above mentioned at the previous item are met;

- In case of a spin off in which the beneficiary companies hold together all the shares of the spun-off company and all the other securities entitling to the right to vote in the general meeting of the spun-off company, the spin off's approval by the general meeting of the spun-off company shall not be necessary if: (i) the publication requirements for the spin off draft were complied with at least one month prior to the spin off becoming effective; (ii) for a period of one month prior to the operation becoming effective all the shareholders of the companies involved in the spin off were given the opportunity to examine the documents provided under Article 244 (1), listed above; (iii) the requirements of informing the shareholders and administration/management bodies of the other companies involved in the operation on any major change in their assets and liabilities;
- Should the cross-border merger by absorption be performed by an absorbing company holding at least 90%, but not all the shares or other securities entitling to the right to vote in the general meetings of the absorbed companies, the experts shall have to prepare a report for the evaluation of the merger draft.

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Regime of Immovable Assets Abusively Taken Over

1 Conditions on establishing and paying compensations for immovable assets abusively taken over

Name of enactment	Government Emergency Ordinance No. 4/2012 on certain temporary measures aimed at consolidating the legal framework required to enforce certain provisions of Title VII "Conditions on establishing and paying compensations for immovable assets abusively taken over" of Law No. 247/2005 on the reform in the fields of property and justice, as well as certain related measures ("**GEO No. 4/2012**")
Publication	Official Gazette of Romania, Part I, No. 169 of 15 March 2012
Entry into force	15 March 2012

Connections with other enactments	Law No. 247/2005 on the reform in the fields of property and justice, as well as certain related measures ("**Law No. 247/2005**") European Convention on Human Rights (the "**Convention**")
Main provisions	As of the entry into force of GEO No. 4/2012, the issuance of the compensation titles, conversion titles, and the procedures for the evaluation of the immovable assets for which compensations are to be awarded provided under Title VII "Conditions on establishing and paying compensations for immovable assets abusively taken over" of Law No. 247/2005 are to be suspended for a 6-month period. Throughout this term, the staff of the National Authority for Property Restitution shall prepare and keep an up-to-date record of the compensation files lawfully registered therewith, shall prepare new compensation files, shall review the existing documentation of such files with a view to lawfully settling the requests for compensation and shall take the necessary steps to perform an inventory and to archive the compensation files submitted by the persons entitled to do so. This legislative measure was adopted in the light of the implementation of the pilot judgment passed by the European Court of Human Rights in the case *Maria Atanasiu and other v. Romania*, which granted an 18-month term to the State of Romania to take the measures for securing an actual protection of the rights provided under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereto, in the light of all the cases similar to the above case, *i.e.* observance of the ownership right and payment of compensations for properties abusively taken over.
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2 Relevant case law

Decision	Decision of the High Court of Cassation and Justice No. 27/2011 on final appeals in the interest of law the capacity to stand trial of the State of Romania, represented by the Ministry of Public Finance, in the claims seeking the award of compensation for immovable assets abusively taken over, which may not be restituted in kind and for which reparatory measures are provided under Title VII of Law No. 247/2005 on the reform in the fields of property and justice, and certain related measures ("**Decision No. 27/2011**")
Publication	Official Gazette of Romania, Part I, No. 120 of 17 February 2012

Connections with the legal enactments

- Law No. 10/2001 on the legal system of certain immovable assets abusively taken over during 6 March 1945 to 22 December 1989 ("**Law No. 10/2001**");
- Law No. 247/2005 on the reform in the fields of property and justice, and certain related measures ("**Law No. 247/2005**");
- Convention for the Protection of Human Rights and Fundamental Freedoms (the "**Convention**");
- 1864 Civil Code of Romania (the "**1864 Civil Code**").

Main provisions

By Decision No. 27/2011, the High Court of Cassation and Justice (the "**High Court**") sustained the final appeal in the interest of law filed by the General Prosecutor of the Prosecution Office attached to the High Court and by the Managing Council of the High Court, given the non-unitary practice of the national courts on the capacity to stand trial of the State of Romania, represented by the Ministry of Public Finance, in the claims seeking the award of compensation for immovable assets abusively taken over, which may not be restituted in kind and for which reparatory measures are provided under Title VII of Law No. 247/2005.

National courts' non-unitary solutions relating to the State's capacity to stand trial concern both (*i*) direct actions against the state, and (*ii*) claims submitted throughout the settlement of the challenge filed pursuant to Law No. 10/2001.

The High Court, having reviewed the final appeals filed in the interest of law, maintained there are 3 types of cases in terms of the State of Romania's capacity to appear in court, in which it has to make a decision, *i.e.*:

- Actions grounded on the provisions of Article 26 (3) of Law No. 10/2001, providing that "[t]he decision or the grounded order dismissing the in-kind restitution notice or claim, as the case may be, can be challenged by the person claiming to be entitled thereto at the civil division of the tribunal in whose jurisdiction is located the headquarters of the holder or of the entity settling the notice, within 30 days from communication. The decision of the tribunal shall be subject to final appeal which falls under the jurisdiction of the court of appeal";
- Direct actions vs. the State of Romania grounded on the provisions of Article 480 et. seq. of the 1864 Civil Code regarding the ownership right and of Article 1 of the First Additional Protocol to the Convention

providing that "[e]very natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law";

- Direct actions vs. the State of Romania grounded on the provisions of Article 13 of the Convention, which provides that „[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity".

The High Court concluded that: (i) as to the claims grounded on the provisions of Article 26 (3) of Law No. 10/2001 seeking to compel the State of Romania to award pecuniary damages for the immovable assets abusively taken over, the State of Romania has no capacity to stand trial and that (ii) the claims seeking the award of pecuniary damages for immovable assets abusively taken over, which may not be restituted in kind and for which reparatory measures are provided under Title VII of Law No. 247/2005, filed directly vs. the State of Romania are inadmissible, if grounded on the general law provisions, on Article 1 of the First Additional Protocol to the Convention (by applying the principle of *specialia generalibus derogant*) and on Article 13 of the Convention (due to the fact that such article may not be deemed as legal basis for challenging a law, on the grounds that it is contrary to the Convention).

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Employment and Social Security

1 Legal novelties concerning the Labour Inspection

Name of enactment	Law No. 51/2012 amending and supplementing Law No. 108/1999 establishing and organizing Labor Inspection ("**Law No. 51/2012**")
Publication	Official Gazette of Romania, Part I, No. 182 of 21 March 2012
Entry into force	24 March 2012
Connections with other enactments	Law No. 108/1999 establishing and organizing Labor Inspection ("**Law No. 108/1999**")
Main provisions	Law No. 51/2012 brought major amendments in terms of establishing and organizing Labor Inspection, a specialty authority of the central public

administration coordinated by the Ministry of Labor, Family and Social Protection.

The main aspects regulated under Law No. 51/2012 are as follows:

- Establishment of the Tripartite Consultative Board

Law No. 51/2012 decides the establishment of a Tripartite Consultative Board within the Labor Inspection, with a role of social dialogue and formed of the appointed representatives of the institution and of unions' and employers' confederations that are representative at a national level. Also, such a tripartite consultative board is established at the level of territorial labor inspectorates coordinated by the Labor Inspection and, again formed of the appointed representatives of the institution and of unions' and employers' confederations that are representative at a national level.

- Status of the Labor Inspector

According to the provisions of Law No. 51/2012, labor inspectors are public servants, holding a specific public position of a special status. The status of the labor inspector shall be regulated by law, to be submitted for approval within 60 days as of the entry into force of Law No. 51/2012. Also, according to the new law, the labor inspectors, the other categories of public servants, and the contract staff of the Labor inspection and territorial labor inspectorates shall benefit from special measures of protection against threats, violence or any acts which endanger them, their families and/or possessions, and shall be entitled to repayment of all expenses incurred with the losses sustained upon performing their duties.

- Additional Duties to the Labor Inspection

Law No. 51/2012 inserted new duties incumbent upon the Labor inspection and, clarified/restated certain duties acknowledged by Law No. 108/1999.

Amongst the new duties, we may find, *inter alia*, conciliation of labor conflicts at the level of companies, receipt and transmission via electronic means, through the territorial labor inspectorates, of the data submitted by the employers and beneficiaries regarding employees and day labourer, as well as methodological control, coordination and guidance with respect to labor safety and health arising from domestic and European legislation and from the conventions of the International Labor Organization.

- Changes in the System of Sanctions

According to Law No. 51/2012, the amount of the fine that may be enforced by

the labor inspectors should they find breaches to the labor laws ranges from RON 5,000 to RON 10,000.

The acts entailing the enforcement of the fine are as follows:

- Prohibiting in any way whatsoever the labor inspectors from performing, in full, or in part, the control or to perform an investigation into the events by any action or inaction of the unit's head, legal representative, employee, agent or any other person present on the controlled locations, including the refusal of the person found at the work place to fill in the identification list or to share information on the investigated event;
- Controlled entity's failure to take or partial taking of the measures ordered by the labor inspector, at the terms established by the latter;
- Failure of the unit head, legal representative thereof, employees, agents or other persons present on the controlled locations to meet the obligation of providing the labor inspectors within the term set by them with the requested documents and information necessary to perform the control or investigation of the events.

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2 Amendments regarding the minimum guaranteed income, the parental leave and monthly allowance, the family-support allowance

Name of enactment

Decision No. 57/2012 amending and supplementing the Methodological Norms implementing the provisions of Law No. 416/2001 on the minimum guaranteed income, approved by Government Decision No. 50/2011, the Methodological Norms implementing the provisions of Government Emergency Ordinance No. 111/2010 on the parental leave and monthly allowance, approved by Government Decision No. 52/2011, and the Methodological Norms implementing Law No. 277/2010 on the family-support allowance approved by Government Decision No. 38/2011 ("GD No. 57/2012")

Publication

Official Gazette of Romania, Part I, No. 82 of 1 February 2012

Entry into force

1 February 2012

Connections with other enactments

- Methodological Norms implementing the provisions of Law No. 416/2001 on the minimum guaranteed income approved by Government Decision No. 50/2011 („**Norms implementing Law No.**

416/2001");

- Methodological Norms implementing the provisions of Government Emergency Ordinance No. 111/2010 on the parental leave and monthly allowance, approved by Government Decision No. 52/2011 ("**Norms implementing GEO No. 111/2010**");
- Methodological Norms implementing Law No. 277/2010 on the family-support allowance approved by Government Decision No. 38/2011 ("**Norms implementing Law No. 277/2010**");
- Council Directive 2010/18/EU implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and CES, and repealing Directive 96/34/CE.

Main provisions

GD No. 57/2012 brings a set of amendments and supplementations to the methodological norms implementing certain enactments which set out various protection, support and social security measures borne by the State budget, as follows:

- Amendments and supplements brought to the Norms implementing Law No 416/2001:
  - Upon establishing the amount and payment of the welfare benefit:
    - The reference criteria considered upon establishing the net monthly income of the family / single person is the aggregate amount of income they make in the month prior to submitting the application;
    - The right to receive welfare benefit is established by taking into account only one category of possessions: *"list of possessions which determine a cut in the grant of the welfare benefit*", listed under Appendix No.4 to GD No. 57/2012, which may be published on the web page of the territorial administrative unit/ subdivision;
    - As a result, Appendixes Nos. 5, *i.e.* "*List of possessions that are not considered to be strictly necessary for a family's needs*" and 6, *i.e.* "*Criteria on the minimum and maximum limits of potential income obtained by capitalizing possessions which exceed in terms of quantity the categories of possessions considered to be strictly necessary for a family's needs*" are repealed.
  - Obligations of the holders of and persons benefiting from the

welfare benefit:

- The obligation of the welfare benefit holder to submit the affidavit on the members of the family and income obtained to the town hall where his domicile or residence is located remains applicable; however, the obligation to submit the certificate issued by the relevant authority with respect to the income subject to income tax is no longer applicable. This process shall take place once every 6 months;
- Imposing the obligation to pay the legal debts to the local budget for the possessions they own, according to Article 248 a) - c) of Law No. 571/2003 on the Fiscal Code, as a prerequisite for preserving the right to welfare benefit.

- Amendment of the welfare benefit, suspension and cessation of welfare benefit payment:
  - Extending the situations of suspending the welfare benefit to reach the case of failure to meet the obligation to pay the legal debts to the local budget for the possessions of the holders;
  - Payment of the legal debts to the local budget within the suspension period provided by law entails resumption of the welfare benefit's payment, upon the order of the mayor, starting with the month following the one when the debt was paid, including for the rights due in the period of suspension;
  - Throughout the suspension of the right to welfare benefit under the above conditions, the beneficiaries shall have no obligation to carry out the actions or works of a local interest provided by law.
- Amendments and supplements brought to the Norms implementing GEO No. 111/2010
- New provisions are inserted with respect to the cumulative conditions to be observed by the persons entitled to benefit from the rights provided under **GEO No. 111/2010**, *i.e.*:
  - The category of persons entitled to receive such rights includes that of the parents of the child with disabilities benefiting from parental leave until the child turns 7, and from the related monthly allowance, provided under Article 32 (1), letters c) and d) of **GEO No. 111/2010;**

- The rights corresponding to the above category of holders are to be granted to rightful persons for each child in this situation and shall be cumulated with the monthly parental allowance;
- Rightful persons shall have to meet the legal payment obligations to the local budget for the assets they own, according to Article 248 letters a) through c) of Law No. 571/2003 on the Fiscal Code.

- Monthly parental leave and allowances, as well as the monthly support allowance:
  - With a view to calculating the amount of the monthly parental allowance, the Social Reference Indicator (SRI) is inserted;
  - Rules are established with respect to claiming the right to at least one month of parental leave by the parent who did not opt for being granted the parental leave and monthly allowance;
  - The rights related to parental leave provided under **GEO No. 111/2010** are granted to persons who attend secondary, university, postgraduate education (*i.e.* master's and doctoral degrees) irrespective of whether they suspend or stop attending the classes for the period until the child turns one or 2, respectively 3 or 7, for a child with disabilities;
  - It is provided for the situation of a person who, during the period until the child turns one or 2, respectively 3, in case of a child with disabilities, gives birth to one or several children. Thus, if the entitled person did not meet, for the previously born child, the conditions for being granted specific rights, but meets them for the latter child, such entitled parent/person who benefited from parental leave and monthly allowance or, as the case may be, the monthly incentive/integration incentive may opt for the termination of the said rights granted for the previous child, the other entitled parent/person having the possibility to claim rights for the latter child;
  - Parents of children with disabilities are excepted from the possibility to benefit from unpaid parental leave after their child turns one;
  - The legal provisions on child benefit are repealed.
- Establishing and payment of monthly allowances, integration

incentives and monthly financial support:

- The former provisions of the implementing norms are corroborated with the current form of GEO No. 111/2010, in the sense that the income due for the respective month, or the income which the person would have received if he/she had worked the entire month / the aggregate amount of the income related to the workdays plus the monthly allowance, on a case-by-case basis, shall be taken in account upon calculation upon establishing the calculation basis for the monthly allowance;
- In the particular case when a person obtains income for several months within the 12-month period, the calculation basis for establishing the amount of the monthly allowance is the aggregate amount of the income obtained during these months divided by 12;
- Procedural rules for the payment of the specific rights under GEO No. 111/2010 are instituted.

- Mention is made that the rights stipulated under *Law No. 448/2006 on protection and promotion of the rights of disabled persons*, prior to 30 December 2011, are maintained until the right to parental leave for raising a disabled child up to the age of 7 and the related monthly financial support are established by means of a decision issued by the executive manager of the territorial agency.

- Amendments and supplements brought to Norms implementing Law No. 277/2010

  - As to the conditions required to be met in order to benefit from the allowance for family support:
    - It is regulated the situation of children under 18 attending a form of education abroad, as they are taken into account upon establishing the right to allowance, provided that the family representative provides evidence attesting to the attendance at classes and the registered number of absences;
    - The family that owns, leases, holds under a free lease agreement or otherwise at least one of the goods listed in the *"list of goods leading to exclusion from the right to*

welfare benefit" of Law No. 416/2001 is excepted from the right to allowance;

- Moreover, the child who completed the mandatory general education, but however did not turn 18, is excepted from the right to child benefit; however, he/she shall be taken into account upon establishing the monthly net average income of the family.

- Maintenance, suspension and resumption after suspension of the child benefit payment:
  - In order to maintain the right to child benefit, the law introduces the beneficiaries' obligation to pay all of their statutory obligations to the local budget in relation to the goods they own;
  - Procedural rules are instituted, concerning the terms for resumption of the child benefit payment if the obligation having led to its suspension were remedied.

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Energy

Name of enactment	Order of the Romanian Energy Regulatory Authority No. 4/2012 on updating the green certificate trading thresholds and amount of a non-purchased green certificate applicable in 2012 ("**Order No. 4/2012**") Order of the Romanian Energy Regulatory Authority No. 5/2012 establishing the mandatory quota for purchasing green certificates related to 2011 ("**Order No. 5/2012**")
Publication	Official Gazette of Romania, Part I, No. 129 of 22 February 2012, and Official Gazette of Romania, Part I, No. 138 of 29 February 2012, respectively
Entry into force	22 February 2012, and 29 February 2012, respectively
Connections with other enactments	Law No. 220/2008 on establishing the system of promoting the generation of energy from renewable energy sources, as amended and supplemented ("**Law No. 220/2008**")
Main provisions	According to the provisions of Article 11 (4) and Article 12 (4) of Law No. 220/2008, starting with 2011, the Romanian Energy Regulatory Authority ("**ANRE**") shall annually adjust with the average annual inflation rate of the previous year

calculated at the level of the Eurozone of the European Union, officially communicated by EUROSTAT (i) the limits in which the green certificate trading value has to fall, *i.e.* the minimum limit of EUR 27/certificate, and maximum limit of EUR 55/certificate, and the (ii) amount of EUR 110 which the energy supplier has to pay for each non-purchased green certificate, should he fail to meet his annual mandatory quota.

Consequently, for 2012, ANRE decided by Order No. 4/2012 the following indexed amounts for trading one green certificate:

- A minimum amount of RON 121.89, the equivalent of EUR 28.172; and
- A maximum amount of RON 248.30, the equivalent of EUR 57.389.

Operators that have the obligation to purchase green certificates and fail to meet the mandatory annual quota shall pay an indexed amount of RON 496.61, the equivalent of EUR 114.777, for each non-purchased green certificate.

Furthermore, pursuant to Article 14 (9) of Law No. 220/2008, ANRE shall have the obligation to establish by the 1st of March, on an annual basis, the mandatory annual quota for the purchase of green certificates for the previous year.

To this effect, ANRE established by Order No. 5/2012 the mandatory quota for the purchase of green certificates for 2011 to be 0.03746 green certificates/MWh.

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Taxation

1 Fiscal residence in Romania of individuals

Name of enactment	ANAF (National Agency for Fiscal Administration) Order No. 74/2012 regulating certain issues on the fiscal residence in Romania of individuals ("**ANAF Order No. 74/2012**")
Publication	Official Gazette of Romania, Part I, No. 73 of 30 January 2012
Entry into force	30 January 2012
Connections with other enactments	Law No. 571/2003 on the Fiscal Code (the "**Fiscal Code**")
Main provisions	ANAF Order No. 74/2012 defines the major elements considered upon establishing the fiscal residence in Romania: • Domicile in Romania; • Permanent house in Romania of the individual, which house may be

either owned, or rented, but always at his/her or his/her family's disposal;

- Centre of most important interests must be in Romania;
- The individual is present in Romania for a period or several periods exceeding in full 183 days, throughout any interval of 12 consecutive months, ending in the relevant calendar year.

Establishment of fiscal residence upon arriving in Romania

The non-resident individual shall have to submit the form *"Questionnaire on the Establishment of the Fiscal Residence of the Individual upon Arriving in Romania*" within 30 days as of the expiry of the 183-day term he/she is present in Romania. The form shall be accompanied by:

- A copy of the passport or national identity document (for EU citizens);
- Fiscal residence certificate issued by the relevant authorities in the foreign State with which Romania concluded a convention for the avoidance of double taxation;
- Documents attesting to the existence of a house of the individual in Romania.

Upon analyzing the residence requirements, both the provisions of the Fiscal Code of Romania and the provisions of the applicable convention for the avoidance of double taxation shall be taken into account.

The relevant fiscal authorities shall notify the individual within a 30-day term whether he/she has an obligation of having all his/her income taxed in Romania, or only the income made in Romania.

Establishment of the fiscal residence upon individuals' leaving Romania

The non-resident individual that had to fill out the form *"Questionnaire on the Establishment of the Fiscal Residence of the Individual upon Arriving in Romania*" and obtained fiscal residence in Romania throughout his stay in Romania shall fill in upon leaving Romania the form *"Questionnaire on the Establishment of the Fiscal Residence of the Individual upon Leaving Romania*". Such person shall be deemed to have the fiscal residence in Romania until the end of the calendar year in which the change which made the person leave Romania occurred; the person shall have fiscal obligations in Romania in this year as well.

In addition, the non-resident individual that, throughout his stay in Romania

provided evidence attesting to his/her residence in a State with which Romania concluded a convention for the avoidance of double taxation, and that had the obligation to fill out the form *"Questionnaire on the Establishment of the Fiscal Residence of the Individual upon Arriving in Romania"* shall fill in upon leaving Romania the form *"Questionnaire on the Establishment of the Fiscal Residence of the Individual upon Leaving Romania"* .

Forms

- "*Questionnaire on the Establishment of the Fiscal Residence of the Individual upon Arriving in Romania*". To be filled in by the individuals *arriving* in Romania and stay in Romania for a period or several periods exceeding in full 183 days, throughout any interval of 12 consecutive months ending in the relevant calendar year. The following individual shall not have the obligation to fill in the form: foreigners enjoying a diplomatic or consular status in Romania, foreigners that are servants or employees of an international and intergovernmental authority registered in Romania, foreigners that are servants or employees of a foreign State in Romania, the members of their families, in observance of the general rules of international law or of the provisions of the special agreements concluded by Romania.
- "*Questionnaire on the Establishment of the Fiscal Residence of the Individual upon Leaving Romania*". To be filled in by the individuals residing in Romania, and by individuals that are not resident in Romania but had the obligation to fill in the above form, leaving our country and staying abroad for more than 183 days in a calendar year. Romanian citizens working abroad, as servants or employees of Romania in a foreign State shall not have the obligation to fill in this form.
- "*Notice on the Fulfillment of the Fiscal Residence Requirements according to the provisions of Articles 7 40 (2) - (6) of Law No. 571/2003 on the Fiscal Code, as amended and supplemented, or of the Convention for the Avoidance of Double Taxation, concluded by Romania and [the relevant State], by the individuals arriving in Romania and staying for more than 183 days*" .
- "*Notice on the Fulfillment of the Fiscal Residence Requirements according to the provisions of Articles 7 40 (2) -(6) of Law No. 571/2003 on the Fiscal Code, as amended and supplemented, or of the*

Convention for the Avoidance of Double Taxation, concluded by Romania and [the relevant State], by the individuals leaving Romania and staying abroad for more than 183 days".

The forms shall be submitted on paper directly to the registry office of the tax authority or to the post office, by registered letter with acknowledgment of receipt.

Throughout 2012, the individuals arriving in Romania subsequent to 1 January 2009 and continuing to stay in Romania subsequent to 1 January 2012 shall also have to fill in the form *"Questionnaire on the Establishment of the Fiscal Residence of the Individual upon Arriving in Romania*". Non-resident individuals that arrived in Romania prior to 1 January 2009 and requesting the issuance of the "Fiscal Residence Certificate *regarding the implementation of the Convention/Agreement for the avoidance of double taxation"* shall have to fill in the form *"Questionnaire on the Establishment of the Fiscal Residence of the Individual upon Arriving in Romania*" and to submit evidence attesting to the payment of the income tax and for the income obtained from any source, both in Romania, and outside Romania, for the categories of income that are subject to income tax in Romania.

2 Novelties concerning the payment of the income obtained from activities performed based on civil contracts

Name of enactment	Public Finance Ministry Order No. 247/2012 on the unitary procedure for implementing the provisions of Article 52 of Law No. 571/2003 on the Fiscal Code ("**Order No. 247/2012**")
Publication	Official Gazette of Romania, Part I, No. 122 of 22 February 2012
Entry into force	22 February 2012
Connections with other enactments	Law No. 571/2003 on the Fiscal Code (the "**Fiscal Code**")
Main provisions	The order brings clarifications on how to pay the tax on the income obtained from activities performed based on civil contracts, further to the entry into force of the Civil Code (on 1 October 2011) and on the amendments brought to the Fiscal Code by Government Emergency Ordinance No. 125/2011 on the amendment of Law No. 571/2003 on the Fiscal Code. In accordance with Article 52 (1) letter b) of the Fiscal Code, Order No. 247/2012 explains the fact that the income payers shall have to calculate, retain and pay the tax by means of withholding as anticipatory payments, in the case of income paid

based on commission contracts, commercial mandate contract and consignment contract classified as civil contracts and based on agent's contracts.

In addition, the order establishes the mandatory nature of anticipatory payments as tax (based on the estimated annual income or of the net income made in the previous year) for:

- Persons organized as individual business, family business, self employed;
- Persons making income from liberal professions;
- Individuals performing independent activities and making income from the assignment of the use of the business' assets;
- Individuals making income from the assignment of the use of personal possessions, whether he performs independent activities, or not.

The payers of income to the individuals that find themselves in one of the above positions shall have no obligations to calculate, retain and pay the tax.

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