

Legal Bulletin

January 2010

Administrative Law	1
Employment Law	3
Insolvency	4
Social Security Law	4
Taxation	5

January 2010

Legal Bulletin

Administrative Law

Name of the enactment	Government Ordinance No. 13/2010 amending and supplementing certain enactments in the field of justice for the purpose of transposing Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (" GO No. 13/2010 ")
Publication	Official Gazette of Romania, Part I, No. 70 of 30 January 2010
Entry into force	2 February 2010
Connections with other enactments	<ul style="list-style-type: none">- Government Emergency Ordinance No. 49/2009 on the freedom to establish the service providers and the freedom to provide services in Romania ("GEO No. 49/2009") – GEO No. 49/2009 is the framework enactment transposing Directive 2006/123/EC of the European Parliament and Council of 12 December 2006 on services in the internal market;- Law No. 178/1997 on the authorization and payment of interpreters and translators used by the Superior Council of Magistracy, Ministry of Justice, Prosecutor's Office attached to the High Court of Cassation and Justice, National Anticorruption Prosecutor's Office, criminal prosecution authorities, courts of law, office of notaries public, attorneys at law and bailiffs ("Law No. 178/1997");- Law No. 192/2006 on mediation and organization of the mediator profession ("Law No. 192/2006");- Government Ordinance No. 2/2000 on the organization of the court and out-of-court expert appraisal activity ("GO No. 2/2000");- Government Ordinance No. 75/2000 on the authorization of forensic experts which may be recommended by the parties to participate to forensic reports ("GO No. 75/2000");- Government Emergency Ordinance No. 27/2003 on the procedure of tacit approval ("GEO No. 27/2003").
Connections with Community legislation	Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (" Directive 2006/123/CE ")

Main provisions

GO No. 13/2010 was adopted to secure a full transposition of Directive 2006/123/CE in the national legislation in the field of justice, in the sense of amending the authorization procedures for the professions falling under the regulation scope of the Ministry of Justice (*i.e.* interpreters, translators, mediators, court expert appraisers and forensic experts).

In order to transpose Directive 2006/123/CE, GO No. 13/2010 amended and supplemented the following enactments:

- Law No. 178/1997;
- Law No. 192/2006;
- GO No. 2/2000;
- GO No. 75/2000.

Basically, the amendments and/or supplements inserted by GO No. 13/2010 concern the conditions set to obtain the permit to exercise the professions of interpreter, translator, mediator, court expert appraiser or forensic expert, with a view to (i) simplify the authorization procedures and to (ii) implement a sole authorization procedure applicable to both Romanian citizens, and citizens of the European Union Member States or States belonging to the European Economic Area or to the Swiss Confederation.

GO No. 13/2010 expressly provides that the authorization of interpreters and translators, mediators, court expert appraisers and forensic experts shall be exempted from the tacit approval procedure, as such is regulated by GEO No. 27/2003.

According to GO No. 13/2010, the authorization procedures and formalities for the above professions may also be fulfilled through the sole contact point (1 According to Article 6 (2) of GEO No. 49/2009, "the electronic SCP [*sole contact point, mention added*] gives the providers the possibility to easily, remotely and electronically fulfill the following formalities: i) full procedures and formalities required to access the service activities thereof, particularly the statements, notices or requests required to obtain authorization, including applications to be registered with a registry; ii) any authorization request required to exercise the service activities"), in accordance with the provisions of GEO No. 49/2009, starting from the date the sole contact point shall become operational.

Author

dragos.calina@tuca.ro

Employment Law

Name of the enactment	Government Decision No. 37/2010 amending and supplementing Government Decision No. 161/2006 on drafting and filling-in the employees' general records registry (" GD No. 37/2010 ")
Publication	Official Gazette of Romania, Part I, No. 45 of 20 January 2010
Entry into force	20 January 2010
Connections with other enactments	Government Decision No. 161/2006 on drafting and filling-in the employees' general records registry (" GD No. 161/2006 ")
Main provisions	GD No. 37/2010 brought certain amendments and supplements to GD No. 161/2006. Thus, in accordance with the provisions of the new enactment, diplomatic missions in Romania, <i>i.e.</i> embassies, representative offices, general consulates and official consulates were exempted from the obligation to establish the employees' general records registry.

Another amendment brought by GD No. 37/2010 to the legislation regulating the employees' general records registry is the obligation incumbent upon the employer to register the identification data of the new employees on the day prior to the commencement of activity, at the latest. The date and ground for termination of the individual employment agreement shall be filled-in upon termination thereof.

Furthermore, GD No. 37/2010 requires the employers to submit the employees' general records registry to the territorial labor inspectorate where their headquarters or domicile is located, on the day prior to the commencement of the activity by the new employees, at the latest, and on the date of termination of their employment agreements, respectively.

As to the punitive regime, GD No. 37/2010 inserted two new misdemeanors in case of failure to comply with the provisions of the enactment. Thus, the failure to register employment agreements with the registry prior to the commencement of activity and filling-in the register with inaccurate data shall be deemed as misdemeanors.

The amount of the fines to be imposed to employers in case of breach of the provisions of the legislation regarding the employees' general records registry has also been modified, the minimum and maximum limits ranging from RON 1,500 to RON 20,000.

Moreover, the newly-adopted Government Decision repealed the provisions on

the option of paying half the minimum fine in case the offender pays the fine immediately or within maximum 48 hours from the conclusion of the misdemeanor minutes.

Author

mariana.magherusan@tuca.ro

Insolvency

Name of the enactment

Government Ordinance No. 1/2010 amending the term set for the establishment of the insolvency court divisions (the “**Ordinance**”)

Publication

Official Gazette of Romania, Part I, No. 54 of 25 January 2010

Entry into force

28 January 2010

Connections with other enactments

Law No. 85/2006 on the insolvency procedure, as further amended and completed (“**Law No. 85/2006**”)

Main provisions

The Ordinance provides the obligation of establishing the 15 insolvency court divisions within one year from the entry into force thereof, thus the deadline shall be 28 January 2011.

According to Law No. 85/2006, insolvency court divisions shall be established within the tribunals of the towns where courts of appeal are in place and shall have jurisdiction over the settlement of the procedures provided under Law No. 85/2006, except for the related ways of appeal.

Author

anca.rusu@tuca.ro

Social Security Law

Name of the enactment

Law No. 12/2010 on the 2010 State Social Security Budget (“**Law No. 12/2010**”)

Publication

Official Gazette of Romania, Part I, No. 61 of 27 January 2010

Entry into force

30 January 2010

Main provisions

Law No. 12/2010 sets the pensions contribution shares (CAS) due as of January 2010. The amount of the contributions to be paid by both the employee and the employer is at the same level as the contributions due until January 2010:

- 31.3% for normal work conditions, of which 10.5% due by the employees, and 20.8% due by the employers;
- 36.3% for abnormal work conditions, of which 10.5% due by the employees, and 25.8% due by the employers;
- 41.3% for special work conditions, of which 10.5% due by the

employees, and 30.8% due by the employers.

The individual contribution share due by the employees includes also the contribution share of 2.5% related to the private pensions funds.

The contribution shares for unemployment and stimulation of labor force set by Law No. 12/2010 are at the same level as the shares paid until the entry into force of this law, *i.e.*:

- the contribution due by the employers to the unemployment security budget is 0.5%;
- the individual contribution due to the unemployment security budget is 0.5%;
- the contribution due to the unemployment security budget by the persons insured under the insurance agreement is 1%;
- the contribution due by the employer to the Fund securing the payment of salary receivables is 0.25%.

According to Law No. 12/2010, the contribution shares due by employers as per the risk category, in accordance with the provisions of Law No. 346/2002 on the insurance for occupational accidents and diseases shall remain at the same value, *i.e.* varying from 0.15% to 0.85%, applied to the amount of gross income made on a monthly basis by their employees.

Law No. 19/2009 sets a level of pension similar to the one applied in October 2009, *i.e.* RON 732.8.

Author

arina.dobrescu@tuca.ro

Taxation

Name of the enactment

Order No. 99/2010 amending and supplementing the methodological norms on the procedure of granting a deferral for the payment of fiscal debts which were not paid when due, and are managed by the National Tax Administration Office, approved by Order of the Minister of Public Finance No. 2,321/2009 (the "Order")

Publication

Official Gazette of Romania, Part I, No. 64 of 28 January 2010

Entry into force

28 January 2010

Connections with other enactments

- Order No. 2321/2009 approving the Methodological Norms on the procedure of granting a deferral for the payment of fiscal debts which were not paid when due, and are managed by the National

Tax Administration Office;

- Law No. 363/2009 approving Government Emergency Ordinance No. 92/2009 on granting a deferral for the payment of fiscal debts which were not paid when due as a result of the financial and economic crisis.

Main provisions

The order provides a series of amendments with respect to the procedure of deferring the payment of fiscal debts; the most important amendments are as follows:

- one of the conditions to be met by the taxpayer to obtain the payment deferral i.e. the condition referring to the failure to register certain outstanding fiscal debts as of 30 September 2008 was eliminated. Please be reminded that, until the issuance of the Order, the deferral of the payment of fiscal debts was conditioned upon the cumulative compliance by the taxpayer with the following conditions: (i) the taxpayer has no outstanding fiscal debts as of 30 September 2008, for which purpose it shall consult and draft the analytical list as of 30 September 2008, attesting to the fact that, as of such date, it submitted all statements and that it has no outstanding fiscal debts [...]; (ii) the taxpayer submitted all fiscal statements in accordance with the law for the period 1 October 2008 and the date of submission of the application for payment postponement [...]; (iii) the taxpayer has a clear fiscal record and, to this end, shall request the department authorized to issue the fiscal record, information on the existence or inexistence of the deeds punished by the fiscal, financial and financial discipline-related laws; (iv) the liability of natural person taxpayers was not entailed, according to the provisions of Law No. 85/2006 on the insolvency procedure, as amended and supplemented, and/or the joint liability of natural person and legal entity taxpayers was not entailed, according to the provisions of Arts. 27 and 28 of the Fiscal Procedure Code [...];
- another condition to obtain the payment deferral was amended, in the sense that the taxpayer shall have to attest to the fact that it submitted all tax statements until the date of the application for payment postponement;
- within 15 days from the communication of the decision approving the payment deferral, the taxpayer shall have to establish securities

under the form of a bank letter of guarantee and/or provide unencumbered assets for the enforcement of the preventative measures;

- throughout the payment deferral, no interest shall be due for the amounts due as fines of any type whatsoever, related fiscal debts according to law, enforcement expenses, legal expenses, confiscated amounts, and amounts representing the equivalent in RON of the confiscated assets and amounts not found at the place of the deed.

Author

olga.cobasneanu@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

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)

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