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Legal Bulletin

June- July 2010

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Legal Bulletin

Administrative Law

Name of the enactment	Law No. 157/2010 amending and supplementing Government Emergency Ordinance No. 27/2003 on the tacit approval proceedings (**"Law No. 157/2010"**)
Publication	Official Gazette of Romania, Part I, No. 496 of 19 July 2010
Entry into force	22 July 2010
Main provisions	Practice noticed that Government Emergency Ordinance No. 27/2003 on the tacit approval proceedings (**"GEO No. 27/2003"**) is not unitary applied by the authorities entitled to issue permits for the performance of different activities, which demonstrated that the fashion of construing this enactment has to be rendered unitary. Law No. 157/2010 amending and supplementing GEO No. 27/2003, was adopted to improve the business environment in Romania by removing administrative obstacles, raising the awareness of public administration authorities so that the terms set under the law for the issuance of permits would be complied with, the economic development stimulated by providing the entrepreneurs with conditions as favorable as possible, and administrative costs as low as possible, fighting against corruption by reducing arbitrary decisions of the administration, and by promoting the quality of public services by simplifying administrative procedures and reducing bureaucracy. Basically, Law No. 157/2010 intends to punish administration for passivity. The main amendments inserted by Law No. 157/2010 aim at the following issues: • Regulating, on a cumulative basis, the authorities' obligations to post, at their headquarters and on their web page, information regarding the issuance of permits, as opposed to the current regulation in which such obligations were provided on an alternative basis; • Regulating the insertion of the list of permits to which the tacit approval proceedings apply, as per each authority field of activity, in the information which the authorities have to post at their headquarters or own web page; • Expressly regulating the punishment for the explicit or tacit refusal of the employee of an authority appointed to apply the provisions

regarding the publicity of the above information, which constitutes a breach and entails the professional liability of the person in question;

- Regulating the authority's obligation to notify, upon the submission of the application, the registration number thereof and express information regarding its legal term of settlement, and whether the requested permit is or is not subject to tacit approval;
- Regulating the fact that, if the permit is not issued within the legal term, the official document confirming that no reply with respect to the applicant's request was issued within the legal term, shall be deemed a permit in all cases, including before the inspection authorities, except for the permit which is valid only in the standard form, regulated by law;
- Eliminating the prosecutor's obligation to participate in the settlement of the disputes in the field of permit issuance falling under the tacit approval proceedings scope.

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Banking Law

Name of the enactment	Government Emergency Ordinance No. 50/2010 regarding agreements covering credits for consumers (the "**Ordinance**")
Publication	Official Gazette of Romania, Part I, No. 389 of 11 June 2010
Entry into force	21 June 2010
Connections with other enactments	• Amends articles of Law no. 190/1999 on mortgage loans for real estate investments. • Repeals Law no. 289/2004 regarding the legal provisions on consumer credit agreements for individuals. • Implements Directive 2008/48/CE of the European Parliament and Council of 23 April 2008 on consumer credit contracts and on repealing Directive 87/102/CEE of the Council.
Main provisions	The Ordinance introduces new rules for the increase of consumer protection in relation to the credit agreements concluded by the aforementioned as debtors, by bringing the domestic provisions in line with the relevant Community provisions. Therefore, the Ordinance is generally applicable to the credit agreements

concluded with individuals acting outside the scope of their professional or commercial capacity, including in the case of agreements guaranteed with real security interests or having the purpose of acquiring or keeping ownership over immovable property or the renovation, fitting out, consolidation, rehabilitation, extension or the increase of an immovable property value. On the other hand, the Ordinance shall not apply to the credit agreements or similar agreements, listed at Art. 2 (2), among others rental or lease agreements which do not provide the option to purchase the asset, credit agreements concluded with investment companies on financial instruments transactions, credit agreements concluded by and between employers and employees under certain preferential terms etc. Furthermore, special rules governing credit agreements in the form of "overdraft" and "overrunning", as well as those granted by social-purpose organizations to their members.

As regards the pre-contractual phase, the Ordinance sets out rules on the means of publication to be used for credit products (namely the information to be mandatorily provided under the said rules), as well as the pre-contractual information (information to be provided to consumer, being extensively regulated, from the type of credit offered to the right to receive a copy of the credit agreement draft – if, under the creditor's internal regulations, the latter might conclude the credit agreement on the date of consumer's request). Secondly, as regards the same phase, special information are provided as well, which shall be provided to consumers in the case of specific categories of credit agreements (credit agreements in the form of "overdraft", those granted by the social-purpose organizations to their members and those providing for the mutual agreement between the creditor and the consumer on certain formalities to postpone the payment or reimbursement, under the terms of Art. 6).

Moreover, mention should be made of the creditors' obligations to provide a written answer on credit granting or refusal thereof, within 30 days from the submission of the credit file, but not later than 60 days from the submission of the application.

A special section is dedicated to the creditors' obligation to assess the consumer's good standing and its right to access the database for this purpose, in compliance with the legal provisions applicable on personal data protection.

For the contractual phase, the Ordinance provides a series of interdictions and obligations incumbent on creditors in regard to the fees and the calculation of applicable interests. Therefore, among the most important such

interdictions/obligations we may list the following:

- The obligation to edit agreements in writing, with Times New Roman font, with font size of at least 10 p.;
- Prohibiting the increase of fees, taxes, tariffs, bank charges or any other related costs, except for those stipulated by the law, during the loan procedure performance;
- Prohibiting the promotion or application of new fees, taxes, tariffs, bank charges or other related costs, except for those stipulated by the law and those related to services expressly required by debtors, throughout the loan process;
- Prohibiting that fees be charged for depositing cash in order to pay loan installments;
- Prohibiting that drawing fees be charged for amounts drawn from the loan;
- The list of fees which may be applied is set out restrictively (file analysis fee – only when the credit is granted, credit/current account management fee, compensation for early repayment, insurance costs, penalties and fee for services provided upon consumer request);
- Prohibiting the entry of certain categories of clauses (creditor's right to unilaterally amend the provisions of the credit agreement, consumer's confidentiality obligation, sanctioning consumers for affecting the creditor's reputation);
- Creditor's obligation of not penalizing consumers or of not declaring the credit as being due in advance, if the latter does not accept the new crediting conditions regarding agreement costs proposed by the creditor.

The Ordinance also provides a comprehensive list of the information which must be included in the credit agreements, ranging from the type of credit, the right to early repayment, the procedure and the creditor's compensation, and respectively to the existence and access to off-court claims and indemnification mechanisms for consumers. Note must be made that all information listed under Art. 46 (1) must be included in the credit agreement, without reference to the creditor's general business terms, the tariffs and fees list or any other documents. The conditions applicable to the consumer's notification regarding any amendment

of the interest rate are also established.

The Ordinance also provides the consumer's right to withdraw from the agreement, within 14 calendar days from the signing thereof, as well as the applicable procedure and the parties' rights, in case of related agreements as well.

As regards **early repayment**, Art. 36 entitles the creditor to charge a certain compensation for the early repayment of loans granted to consumers. Therefore, as a rule, Art. 67(2) provides the maximum limits of the compensation which may be required by the creditor, based on a calculation method provided to the consumer, for fixed interest rates:

- 1% of the loan amount repaid in advance, when the term between the early repayment date and the credit agreement termination date is more than one year; and
- 0.5% of the loan amount repaid in advance, when the term between the early repayment date and the credit agreement termination date is less than one year.

The creditor is not entitled to compensation for early repayment in the following situations:

- If the repayment is made further to the performance of an insurance agreement covering the risk of default;
- If the credit agreement is concluded as an "overdraft facility"; or
- If the early repayment falls within a period for which the interest rate is not fixed (provided as a fixed specific percentage under the agreement).

In the sense of the law on leasing operations, consumers benefit from the aforementioned provisions, related to repayment in advance, only after the expiry of a 12-month period from the execution of the leasing agreement.

The Ordinance establishes an exception from the common law on the notification of the **assignment** of creditors' rights related to the credit agreements or of the assignment in full of the agreements – namely this notification is to be made by the assignor by registered letter with acknowledgement of receipt, within 10 days from the signing date of the assignment agreement – only if the assignor ceases to manage its credit.

There are provided as well specific rules regarding the effective annual interest rate – the calculation formula and the elements to be included or not therein (Art. 72 *et seq.* and Appendix No. 1).

In addition to the credit intermediaries' obligations to the consumers, it is prohibited to execute, including through goods or services providers, credit agreements for the purchase thereof in the related commercial premises, except for related agreements (in the sense of the Ordinance, they represent credit agreements meant exclusively to finance certain agreements for the purchase of goods or services, where the credit agreement and the purchase agreement represent, objectively speaking, a commercial unit).

Note should be made that the Ordinance stipulates the consumers' prohibition to waive their rights awarded by the Ordinance. Furthermore, they benefit from the provisions of the Ordinance, notwithstanding the name or the object of the agreements, allowing draw-downs and operations under this Ordinance.

As regards the breach of the Ordinance provisions, the National Authority for Consumer Protection ("**NACP**") is the surveillance and control authority. The applicable **penalties** range from RON 10,000 to RON 80,000 in most cases, and from RON 20,000 to RON 100,000 in case of breach of obligations regarding credit agreements. Furthermore, complementary penalties are provided, ranging from the issuance of an order for the observance of the breached contractual clauses, to the repair of the detected deficiencies, within 15 days. The failure to fulfill the measures ordered by the NACP minutes or the repetition of the offence within 6 months from the first acknowledgement thereof, is considered to be an aggravation and is penalized by a fine ranging from RON 80,000 to RON 100,000. As a complementary measure thereto, NACP may temporarily suspend the creditor's crediting activity until the breach is remedied, within 90 days.

Note should be made that the Ordinance repeals the provisions of Law no. 190/1999, regarding the applicability thereof to mortgage loan agreements concluded with consumers, except for certain procedural rules (i.e. Art. 11, 12, 13 para. (2), 18 and 19).

Therefore, most provisions of Law No. 190/1999 on mortgage loans for real estate investments continue to be applicable exclusively to mortgage loan agreements executed with non-consumers (be it legal entities or individuals, in exercising their professional or commercial activities).

Furthermore, the Ordinance also brings minor amendments to Law No. 190/1999

on mortgage loans for real estate investments (regarding certain definitions, notification obligations and penalties).

According to Art. 93, the Ordinance expressly stipulates that its provisions are supplemented by the provisions of Law No. 190/1999 on mortgage loans for real estate investments, as further amended and supplemented, of Government Ordinance No. 51/1997 on leasing operations and leasing companies, republished, as further amended and supplemented, and of Government Ordinance No. 21/1992 on consumer protection, republished, as further amended and supplemented. Therefore, the Ordinance establishes the general framework applicable to credit agreements executed with consumers and it is applicable, pursuant to Art. 2 para. (1) and (2), inclusively to real estate and mortgage loan agreements, as well as to leasing agreements (i.e. agreements including directly or indirectly the call obligation or option of the user) concluded with the latter.

As regards these last specifications, Art. 93 may be construed in the sense that the Ordinance is supplemented by the special rules, as necessary, provided by the two enactments referred to, i.e. Law No. 190/1999 on mortgage loans for real estate investments (particularly those articles which remained applicable to mortgage loan agreements concluded with consumers – Art. 11, 12, 13 para. (2), 18 and 19) and respectively Government Ordinance No. 51/1997 on leasing operations and leasing companies. From this perspective only, limited from the point of view of its object, the Ordinance can be regarded as a general norm considering the mortgage loan and the leasing agreements executed with consumers.

As regards consumer protection, in relation to the credit agreements regulated by the Ordinance, it represents a special norm, supplemented by the provisions of Government Ordinance No. 21/1992 on consumer protection, republished, as further amended and supplemented.

Pursuant to Art. 95 of the Ordinance, creditors are awarded a 90-day term from the entry into force thereof, to ensure the compliance of the ongoing agreements with the Ordinance provisions.

It is important to add that the application of such provisions with regard to ongoing agreements is a benefit granted to consumers by the Romanian lawmaker, since Art. 30.1 of EC Directive No. 48/2010 stipulates that its provisions are not applicable to credit agreements in force on the effective date of the national regulations to be implemented.

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Civil Procedure

Name of the enactment	Civil Procedure Code of Romania
Publication	Official Gazette of Romania, Part I, No. 485 of 15 July 2010
Entry into force	The date which shall be provided under the law on the implementation of Civil Procedure Code, to be presented by the Government before the Parliament for approval within 6 months from its publication in the Official Gazette of Romania.
Main provisions	The new Civil Procedure Code expressly states that court cases and forced execution cases initiated under the former Romanian procedural law shall remain subject to the latter. The new Civil Procedure Code includes significant amendments on the procedural institutions regulated by the current code, also containing various new institutions meant to ensure enhanced procedural guarantees for the litigating parties, as well as efficiency and speed of judicial process. The law provides for a more comprehensible and unitary regulation of the fundamental principles related to civil court cases, as well as the transposition of some constitutional principles into the civil court cases matter. The new code substantially differs from the current regulations, which hinders us from presenting the new regulations herein. We shall therefore confine ourselves to itemize the new institutions and the significant amendments to the current regulation. • New civil procedural institutions: - *Ex officio* ordering other persons to join judicial and non-adversarial proceedings; - Request for a decision beforehand on the settlement of certain legal issues (under the jurisdiction of the High Court of Cassation and Justice); - New evidence (electronic documents, physical evidence such as photographs, films, photocopies, disks etc.); - The cross final appeal and the provoked final appeal (similar to those provided under the current regulations on appeal). • Significant amendments: - Amendments on the jurisdiction of the courts (unification of civil and commercial jurisdictions, unification of the jurisdiction to settle the

non-monetary claims etc.);

- Amendments on jurisdiction and settlement of claims for change of venue (the change of venue based on legitimate doubt is under the jurisdiction of a higher court, the change of venue based on public security shall be tried by the High Court of Cassation and Justice);
- The incompatibility of the judge who settled the case in the first instance, second appeal or final appeal (or gave an interlocutory decision) with the settlement of the same case by revision, challenge for annulment or after being referred for retrial;
- The rule of settling the trial before the court of first instance, in closed session;
- The second/final appeal terms have been extended to 30 days;
- As a general rule, the final appeal is under the jurisdiction of the High Court of Cassation and Justice, unless the law provides the jurisdiction of a higher court;
- In arbitration, the requirement for a litigation to have as object monetary rights, has been removed;
- In forced execution cases, the possibility of various categories of creditors, expressly provided under the law, to intervene in the relevant procedure initiated by another creditor.

• Amendments meant to ensure an expeditious civil court case:

- Expeditious summoning procedure (the summons may be communicate by the parties; summon by fax, email or by other communication means etc.);
- Establishment of the presumption according to which the duly summoned party has acknowledged the term;
- Strict terms (doubled by sanctions) on the submission of procedural documents;
- Possible setting of hearings from one day to the other;
- Possibility to waive the appeal against an appealable decision only to challenge it by final appeal directly;
- The case shall be referred for retrial only once;

- Creating the institution of the challenge based on trial gaps;
- Regulating a simplified special procedure in relation to the claims at an amount of less than RON 10,000.

- Unification of previous regulations contained in various enactments, the most important of which are:
- The regulations on court evidences;
- Procedural norms of private international law.

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Consumer Protection

Name of the enactment

Law No. 161/2010 amending Art. 84 of Law No. 296/2004, regarding the Consumer Code and Law No. 193/2000 on abusive clauses of the agreements executed by traders and consumers (the "**Law**")

Publication

Official Gazette of Romania, Part I, No. 497 of 19 July 2010

Entry into force

22 July 2010

Connections with other enactments

Amending certain articles of Law No. 296/2004 on Consumer Code ("**Consumer Code**") and respectively Law No. 193/2000 regarding abusive clauses from the agreements executed by traders and consumers ("**Abusive Clause Law**").

Main provisions

The law supplements Art. 84 of the Consumer Code, in the sense that it states the provisions thereof (the consumer's right to rescind agreements executed with traders is supplemented by its right to terminate them, and the prohibition of the contractual cancellation of such rights is supplemented by the prohibition to restrict them). Furthermore, it is also provided that the parties' rights to fair compensation shall not be affected in case of unilateral termination.

As regards the amendments to the Abusive Clause Law, this Law supplements the list of abusive clause examples, in the sense of the above, by such clauses limiting or annulling the consumer's right to rescind or unilaterally terminate the agreement, if:

- The trader unilaterally amended any clauses entitling the latter to amend unilaterally, without the consumer's approval, the clauses concerning characteristics of products and services to be supplied, or the delivery term of products or the execution term of certain services;
- The trader failed to fulfill its contractual obligations; or

- The trader imposed to the consumer, under the agreement, clauses regarding the payment of a fixed amount in case of unilateral termination.

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Criminal Procedure Law

Name of the enactment	Law No. 135/2010 on Criminal Procedure Code ("**New Criminal Procedure Code**")
Publication	Official Gazette of Romania, Part I, No. 486 of 15 July 2010
Entry into force	The new Criminal Procedure Code shall enter into force on the date established by the law on its implementation. Within 12 months after the publication of the New Criminal Procedure Code in the Official Gazette, the Government shall present the bill on the implementation of Criminal Procedure Code before the Parliament, for approval purposes.
Connections with other enactments	Decision No. 829/2007 approving the previous thesis of the Criminal Procedure Code bill (**"Decision No. 829/2007"**).
Main provisions	The regulations of the New Criminal Procedure Code aim to reduce duration of trials, simplify criminal judicial procedures by introduction of new institutions, perform conceptual harmonization with the provisions of the new Criminal Code, regulate accordingly the international obligations undertaken by our country on enactments related to criminal procedural law, establish an appropriate balance between the requirements for criminal procedure efficiency, protection of basic procedural rights and fundamental human rights of participants in the criminal trial and unitary compliance with the principles of fair criminal trial, create a unitary jurisprudence on national level, in accordance with the international standards and requirements of European Court of Human Rights case law. The separation of judicial competences in criminal court proceedings is one of the principles introduced under the new enactment. According to this principle, four judicial functions are being exercised during criminal court proceedings: • Criminal prosecution (by criminal investigation bodies and prosecutor); • Disposition over fundamental rights and freedoms in the course of criminal prosecution (by the judge of rights and freedoms); • Examination of the legal character of initiation/non-initiation of criminal prosecution (by preliminary chamber procedure); • Judgment (by the courts of law).

As regards the simplification of criminal judicial procedures, the New Criminal Procedure Code introduces new institutions, such as: the agreement on guilt acknowledgment, harmonization of current evidence/evidentiary means with the European relevant standards, reduction of jurisdiction degrees, and regulation of final appeal in cassation as extraordinary appeal.

Under the new regulations, the civil action shall be settled in the course of criminal court proceedings, unless it exceeds their reasonable duration; furthermore, the obligation to exercise it *ex officio* is limited.

In addition, under the New Criminal Procedure Code, in the course of criminal court proceedings, the defendant, the civil party and the party liable under the civil law may conclude an intermediation transaction or agreement on civil claims.

The New Criminal Procedure Code introduces the institution of the judge of rights and freedoms, competent to rule on preventive measures, prejudgment measures, provisional security measures, prosecutor's acts (in certain cases), approval of searches, using special surveillance or investigation techniques or other legal proofs, anticipated taking of evidence.

It introduces the institution of the preliminary chamber judge, competent to verify lawfulness of the prosecutor's decision to proceed with the criminal prosecution, taking of evidence and the effects of procedural acts made by the criminal investigation bodies, the settlement of complaints against the solution not to proceed with the criminal investigation/prosecution, settle other situations expressly provided by the law.

The new enactment contains the following preventive measures: detention, judicial control, judicial control on bail, house arrest and preventive arrest.

For the first time, Romanian criminal procedure law proposes the regulation of a new preventive measure, i.e. house arrest.

Further amendments are brought to the prior complaint procedure. Such claim may be filed within 3 months as of the day when the injured party found out about the committed deed.

Under the new regulation, the institution of the accused (the person against which the criminal prosecution was ordered) has been removed and replaced by the institution of the suspect.

The suspect is the person who, according to the data and evidence of the case, is reasonably presumed to have committed a deed under the criminal law; this

person has all the legal rights of the defendant.

The new regulation no longer contains the exhaustive list of evidentiary means; it merely provides that, in the course of criminal court proceedings, all legal evidentiary means can be used.

As regards the appeal, the New Criminal Procedure Code no longer regulates the institution of final appeal. It introduces instead extraordinary appeals and the institution of final appeal in cassation. The final appeal in cassation aims to vest the High Court of Cassation and Justice to rule on the compliance of challenged decision with the legal applicable laws.

The revision of decisions given by the European Court of Human Rights is another extraordinary appeal introduced by the new enactment.

Thus, the final decisions given by the European Court of Human Rights on breaches of fundamental rights and freedoms may be subject to revision, if any breach of the Convention on human rights and fundamental freedoms results in aggravated and continuous consequences that may only be remedied by revision of the ruling.

Another novelty in the criminal court proceedings is the institution of High Court of Cassation and Justice notification for a ruling on certain legal issues. If the court of law finds during the court proceedings that a legal issue, on which the settlement of the case is based, was interpreted distinctly by the case law, it may request the High Court of Cassation and Justice to issue a prior decision for the settlement of the legal issue it had been vested with. The settlement of the legal issues is binding on the court settling the matter in which the legal issue was raised and on other courts as well.

As regards the special procedures, the New Criminal Procedure Code introduces the procedure of the agreement of guilt acknowledgement (which shall only be applicable to the crimes for which the law provides the punishment by fine or by maximum 7-year prison sentence).

The agreement on guilt acknowledgement may be concluded between defendant and prosecutor in the course of criminal prosecution, further to the proceeding with the criminal prosecution.

After concluding the agreement on guilt acknowledgement, the defendant shall benefit from a 1/3 reduction of punishment limits provided under the law on jail sentence and from a ¼ reduction of the punishment limits provided by the law in

relation to fines.

Regarding legal entities, the New Criminal Procedure Code introduces the procedure on criminal liability of legal entities. Pursuant to the new enactment, the object of the criminal action is criminal liability of legal entities - offenders.

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Employment and Social Security Law

1 Enactment of certain measures necessary to reestablish budget balance

Name of the enactment

Law No. 118/2010 on measures necessary to reestablish budget balance (**"Law No. 118/2010"**)

Publication

Official Gazette of Romania, Part I, No. 441 of 30 June 2010

Entry into force

3 July 2010

Connections with other enactments

Law No. 330/2009 on unified public sector wages

Main provisions

Government Emergency Ordinance No. 1/2010 on measures for the reassignment of staff categories from the budgetary sector and for determining the wages thereof, as well as other measures in the budgetary sector

Law No. 118/2010 enforced a series of measures in the budgetary sector, by diminishing wage related rights as well as other rights that the staff of public authorities and institutions benefits from. Thus, the gross amount of the monthly wage/military pay/allowance, including bonuses and other wage related rights of the staff employed in the budgetary sector, was reduced by 25%, without the level of the gross national minimum wage lowering below RON 600.

Furthermore, the following rights were diminished as well by a percentage of 25%:

- Wages of the staff assigned for permanent missions abroad and respectively of the Romanian staff assigned for temporary missions abroad;
- Rights regarding the monthly compensation for the rent of staff members employed in the budgetary sector;
- Rights/expenses for medical assistance, medicines and prostheses related to the budgetary sector staff;

- Rights regarding the wages of the clerical and non-clerical staff;
- Rights related to compensations granted to members of the Romanian Academy, the Academy of Romanian Scientists, the Romanian Academy of Medical Science, and of the Romanian Academy of Technical Science.

The measures regarding the reduction of wages by 25% are applicable as well for the staff of the National Bank of Romania, of the National Securities Commission, of the Private Pension System Supervisory Commission and of the Insurance Supervisory Commission.

In addition to the reduction of wages, a series of other such rights were reduced by 15%, i.e.:

- Rights related to unemployment benefits;
- Rights related to child care allowance;
- Monthly aid granted to surviving spouses;
- Financial aid to the survivors of members of the Romanian Academy and of the Academy of Romanian Scientists.

In addition, the new enactment has suspended the application of the legal provisions on the early retirement and partial early retirement.

The majority of the above measures, provided under the Law No. 118/2010, are applicable until December 31, 2010.

2 New regulations related to pensions

Name of the enactment	Law No. 119/2010 on determining measures related to pensions (**"Law No. 119/2010"**)
Publication	Official Gazette of Romania, Part I, No. 441 from 30 June 2010
Entry into force	3 July 2010
Connections with other enactments	Law No. 19/2010 on the public pensions system and on other social insurance rights (**"Law No. 19/2000"**)
Main provisions	Law No. 119/2010 brought a series of amendments to the legal provisions on special pensions. Therefore, the following categories of pensions, determined under the prior legislation, become pensions in the sense of Law No. 19/2000:

- State military pensions;

- State pensions of police officers and public officers with special status, operating in the prison administration system;
- Public service pensions of auxiliary specialized staff from courts and prosecutor's offices attached thereto;
- Public service pensions of diplomatic and consular staff;
- Public service pensions of parliamentary public officers;
- Public service pensions of deputies and senators;
- Public service pensions of professional civil aeronautical flight staff from civil aviation;
- Public service pensions of the Court of Accounts staff.

The level of pensions regulated by the Law No. 119/2010 shall be recalculated by determining the average annual scoring of each pension's quantum, using the calculation algorithm provided under Law No. 19/2000.

Furthermore, Law No. 119/2010 provides that within 30 days from the entry into force thereof, the procedure for the classification by disability degrees shall be approved, for the purpose of registration for disability pension. The National House of Pensions and other Social Insurance Rights, by the National Institute for Medical Expertise and Work Ability Recovery, shall organize the verification of the classification by disability degrees of the employees retired for disability reasons registered by said date. If it is proven that the disability pension beneficiary obtained the right to such pension by committing an offence, he/she can be compelled to repay the amounts thus collected.

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Energy

Name of the enactment	Law No. 139/2010 amending and supplementing Law No. 220/2008 on the establishment of the system promoting the generation of energy from renewable sources (**"Law No. 139/2010"**)
Publication	Official Gazette of Romania, Part I, No. 474 of 9 July 2010
Entry into force	12 July 2010
Connections with other enactments	Law No. 220/2008 on the establishment of the system promoting the generation of energy from renewable sources (**"Law No. 220/2008"**).
Connections with Community	Partially transposes Directive 2009/28/EC of the European Parliament and of the

legislation	Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC.
Main provisions	Law No. 139/2010 is intended to harmonize the national legislative framework with the new requirements of Community law in the field of energy from renewable sources and, at the same time, provides certain clarifications, amendments or additional details on the system of promotion of energy generation from renewable sources, *i.e.* the system of mandatory quotas as combined to the trading of green certificates ("**Promotion System**").

The main amendments brought by Law No. 139/2010 to Law No. 220/2008 are as follows:

- The energy producers using bio-liquids may benefit from the Promotion System; however, in addition to the electricity generated from industrial and/or municipal waste coming from import, irrespective of the installed power capacity of the electric power plant, the electricity (i) generated in power plants with pumping storage from water previously pumped in the top reservoir (ii) generated in multi-fuel electric power plants using renewable and conventional sources in which the power content of the conventional fuel is more than 75% of the full used power content and (iii) related to the plant's own technological consumption shall be excluded from the application of the system.

  The isolated electricity and power systems (i.e. local systems for the generation, distribution and supply of electricity which are not interconnected to the national electricity and power system) shall also benefit from the green certificate promotion system;

- In the case of electricity generated from renewable sources in high-efficiency cogeneration, classified in accordance with the regulations in force, producers shall be entitled to either choose the promotion scheme for cogeneration, or the Promotion System;

- To this end, producers entering the classification prepared by the Romanian Energy Regulatory Authority ("ANRE") may benefit from the Promotion System if commissioning activities, refurbishments at groups/plants occur until the end of 2016 (unlike Law No. 220/2008 setting the end of 2014 as deadline);

- Qualifying for the implementation of the Promotion System may be done in stages, as each power unit in a power capacity containing several such power units is commissioned, in which case the implementation period of the Promotion System shall be differently applied, as per the time of qualification;
- Units/plants which have been used before for the generation of electricity on the territory of other States, may benefit from the Promotion System for a 7-year period, if they are used in isolated electrical and power systems or commissioned prior to the entry into force of the law, if not older than 10 years and compliant with the environmental protection norms;
- The mandatory annual quotas of electricity generated from renewable sources benefiting from the Promotion System (i.e. the share of energy generated from renewable sources in the gross final electricity consumption, for which the mandatory quota system is applied, except for the electricity generated in hydroelectric power plants with installed power capacities higher than 10MW) shall be as follows: 2010-8.3%; 2011-10%; 2012-12%; 2013-14%; 2014-15%; 2015-16%; 2016-17%; 2017-18%; 2018-19%; 2019-19.5%; 2020-20%, and, throughout 2020-2030, the relevant ministry shall establish them, however, they shall not be less than the quota established for 2020, and the mandatory annual quotas for the acquisition of green certificates shall be established by ANRE, based on its own methodology;
- The level of the national objective concerning the share of the energy generated from renewable sources in the gross final consumption of energy for 2020 shall be 24%, and the level concerning the share of energy from renewable sources to be used in all forms of transmissions in 2020 shall be at least 10% of the final national consumption of energy in transmissions;
- Law No. 139/2010 amends the number of green certificates from which producers shall benefit, as provided in the table below, and expressly provides that the green certificates shall be awarded including for the energy generated in the probationary period of running of the power units/plants:

Source of Energy	No. of green certificates awarded subsequent to the amendment of Law No. 220/2008
Wind	2 green certificates for each 1MWh generated and delivered until 2017, and 1 green certificate for each 1MWh generated and delivered staring from 2018
Hydroelectric, generated in new plants with an installed power capacity of maximum 10 MW	3 green certificates for each 1 MWh generated and delivered
Hydroelectric, generated in refurbished plants with an installed power capacity of maximum 10 MW	2 green certificates for each 1 MWh generated and delivered
Hydroelectric, generated in plants with an installed power capacity of maximum 10 MW which fall under none of the above categories	1 green certificate for every 2 MWh
Solar	6 green certificates for each 1MWh generated and delivered
Geothermal, biomass, bio-liquid, bio-gas, gas resulting from the processing of waste, sludge fermenting gas resulting from waste water treatment stations	3 green certificates for each 1MWh generated and delivered. In addition, another green certificate shall be awarded for each 1MWh generated and delivered, if the electricity is produced in high-efficiency cogeneration

- Until the national targets are achieved, green certificates may be traded on the internal green certificates market only;
- The trading value ranging from EUR 27 to EUR 55/certificate shall be valid until 2025 and, starting from 2011, shall be indexed on an annual basis by ANRE, according to the average inflation index registered in December of the previous year, calculated at the EU 27 level and

officially communicated by EUROSTAT;

- The equivalent value of the not purchased green certificates which the supplier that fails to achieve the annual mandatory quota has to pay is increased from EUR 70 to EUR 110 Euro, and shall be indexed in the same fashion as the trading value of the green certificates, and the amounts so collected by the transmission and system operator shall represent income to the Environmental Fund for financing the generation of energy from renewable sources by individuals investing in energetic capacities of up to 100 kW;
- It is provided the obligation of implied suppliers that, upon the request of the producers and consumers holding electrical plants (i) which use renewable energy sources (ii) have installed power capacities of maximum 1 MW and (iii) are located in the delimited license area of the implied suppliers, to purchase electricity at prices regulated under agreements concluded for a period of at least one year;
- Individuals holding units generating electricity from renewable sources with an installed power capacity below 1MW per consumption location, and public authorities holding capacities generating electricity from renewable sources, fully or partially built from structural funds may be provided by the suppliers with which they concluded an electricity supply agreement, upon request, with the financial and/or quantitative offset service between the delivered energy and consumed energy from the grid, according to a methodology to be prepared by ANRE;
- The transmission and system operator and/or the distribution operators shall secure the transmission, and distribution and dispatching, respectively, of energy generated from renewable sources for all producers with precedence, with the possibility of amendment of the notices on the date of operation, according to a methodology to be established by ANRE, so that the limitation or cessation of generation be applied in exceptional cases only, to secure stability and security of the national electric and energetic system;
- The function of origin warranties shall be expressly limited to demonstrating to the end users the share or quantity of energy from renewable sources in the energy mix of a supplier, and ANRE shall

prepare an origin warranty issuance and monitoring regulation;

- As to the access to the electric grid, the connection of the producers of energy from renewable sources shall be done with precedence, in accordance with the relevant regulations in force; at the same time, the grid operators shall have the obligation to provide them, for system connection purposes, with complete necessary information, including: (i) a detailed and extensive estimate of the connection costs (ii) a reasonable and accurate term for the receipt and analysis of the request for the connection to the electric grid and (iii) a reasonable informative schedule for any proposed connection to the electric grid;
- To permit the achievement of the national objective regarding the energy from renewable sources, it is regulated Romania's possibility of concluding joint agreements with the Member States of the European Union, for one or several years, in order to (i) agree upon certain transfers of quantities of electricity from renewable sources with another Member State (ii) perform certain joint projects for the generation of energy from renewable sources and (iii) harmonize the national promotion schemes. In addition, Romania may conclude agreements with third parties to cooperate to the performance of certain projects for the generation of electricity from renewable sources;
- The regulation framework required to cooperate with other Member States which may also involve private operators in all types of joint projects for the generation of electricity, heating or cooling energy from renewable energy sources shall be subsequently approved by the Government;
- A legislative novelty is also the modality to notify the European Commission on the quantity of electricity, or heating or cooling energy from renewable sources taken into consideration upon the global national objective of a Member State throughout the achievement of certain joint projects, and the conditions in which electricity generated from renewable sources in a third state is taken into consideration with respect to the global national objectives;
- The secondary legislation to be drafted subsequent to the amendments brought to Law No. 220/2008 includes, inter alia, the regulation framework regarding (i) the promotion of using bio-fuels

and bio-liquids, and the fashion in which the use thereof is taken into consideration upon the fulfillment of the established objectives (ii) takeover of green certificates in excess (iii) statistical transfers of electricity from renewable sources (iv) the fashion in which the results of joint agreements with other states are taken into consideration upon the establishment of the national objective.

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Fiscal Law

1 Enactment of certain measures against tax evasion

Name of the enactment	Government Emergency Ordinance No. 54/2010 **("GEO No. 54/2010")** on certain measures against tax evasion
Publication	Official Gazette of Romania, Part I, No. 421 of 23 June 2010
Entry into force	23 June 2010 (except for the increase of excises in cigarettes, drinks and intermediary products, which comes into force on 1 July 2010)
Connections with other enactments	• Law No. 571/2003 on the Fiscal Code **(the "Fiscal Code")** • Government Emergency Ordinance No. 104/2002 **("GEO No. 104/2002")** on the customs regime of duty free commodities • Law no. 86/2006 on the Romanian Customs Code **(the "Customs Code")** • Government Ordinance No. 92/2003 on the Fiscal Procedure Code **(the "Fiscal Procedure Code")** • Law No. 31/1990 on companies (**"Law No. 31/1990")** • Law No. 241/2005 on the prevention of and fighting against tax evasion **("Law No. 241/2005")** • Law No. 508/2004 on the establishment, organization and operation in the Public Ministry of the Division for the Investigation of Organized Crime and Terrorism **("Law No. 508/2004")** • Law No. 39/2003 on the prevention of and fighting against organized crime **("Law No. 39/2003")** • Government Emergency Ordinance No. 195/2002 on public road traffic **("GEO No. 195/2002")** • Law No. 290/2004 on the criminal record **("Law No. 290/2004")**

Main provisions

The enactment of GEO No. 54/2010 comes from the need to urgently fight VAT frauds; to ensure a better monitoring of undertakings operating with excisable products, in order to accelerate the collection of excises to the State budget and to decrease tax evasion in this sector.

Amendments brought to the Fiscal Code:

- As of 1 August 2010, the National Tax Management Agency introduces the register of intra-community operators, which includes all taxable persons and non-taxable legal entities making intra-community operations. On the date when VAT registration is requested, taxable persons and non-taxable legal entities shall also request the competent fiscal body to register them in the Register of intra-community operators if they intend to perform one or more intra-community operations. If persons who are already registered wish to perform an intra-community activity, they must request to be registered before they perform the respective operations;
- In the operations for which reverse taxation is applied, in addition to the delivery of wastes and secondary raw materials and the delivery of wood and wood materials, the following deliveries of goods shall be included: cereals, technical plants, vegetables, fruits, meat, sugar, flour, bread and pastry products, as set by order of the Minister of Public Finance, at the proposal of the President of the National Agency for Fiscal Management;
- A new condition is added to the conditions for the granting of tax warehouse license: the person to act as holder of an authorized fiscal warehouse cannot have outstanding tax obligations to the general consolidated budget. The license validity term is limited to 3 years in case of large and medium taxpayers incorporated as per the regulations in force and 1 year in the other cases. Also, this enactment sets forth a limitation to the maximum number of fiscal warehouses which may be held by an entity;
- An important amendment, relevant also in the area of mergers and acquisitions, concerns the obligation to inform the fiscal authorities with 60 days in advance of the closing if an assignment of shares pertaining to an entity holding an authorized fiscal warehouse or to an entity which had an authorized fiscal warehouse annulled or revoked in the past three years is envisaged with a view to perform a

tax inspection, with the exception of the legal entities traded on a regulated market.

Amendments brought to the GEO No. 104/2002:

- The operation licenses issued for duty-free / diplomatic duty-free shops cease to be valid within 5 years as of the issuance date thereof, without the possibility to continue to operate duty-free commodities by the issuance of new licenses;
- After the coming into force of this enactment, the Ministry of Public Finance no longer issues operation licenses for duty-free / diplomatic duty-free shops;
- The products are traded within the limit of quantities for personal use, at prices not including customs duties, value-added tax and related excise;
- The introduction of commodities in order to be sold in duty-free / diplomatic duty-free shops is conditional on the payment of the excise, value-added tax and customs duties, as the case may be. Such fees are to be refunded. The procedure and conditions for refunding the customs duty, the value-added tax and the related excise for the products traded in duty-free / diplomatic duty-free shops shall be set by order of the Minister of Public Finance, at the proposal of the President of the National Agency for Fiscal Management;
- The prices of duty free commodities shall be expressed in EUR and be visibly displayed. The fiscal electronic cash registers of duty free and diplomatic duty free shops shall have an online connection to a server of the customs office/point where the duty free shop is located.

Amendments brought to the Romanian Customs Code:

- The crime regime became harsher, the following 2 cases being added to the smuggling crime: introducing or taking from Romania, *twice during the same year*, the goods or commodities which must be classified under a customs regime, if the customs value of such goods or commodities is below RON 20,000 in case of excisable products and below RON 40,000 in case of the other goods or commodities, and transferring in any way commodities undergoing customs transit. Smuggling crime also includes the collection, holding, production,

transport, takeover, storage, delivery, sale and trade with goods or commodities which must be classified under a customs regime, although being aware that they result from smuggling or are meant for the perpetration of smuggling activities;

- As regards misdemeanors, the competent bodies have the obligation to create a joint database to define misdemeanors against the customs regime; such database is to be managed by the Ministry of Domestic Affairs.

Amendments brought to the Fiscal Procedure Code:

- Extension of the scope of persons who are jointly liable with the debtor: the associates in associations without legal personality, including members of family enterprises, for the fiscal obligations owed by them, together with the legal representatives who, in bad faith, determined the non-declaration and/or non-payment of fiscal obligations when due; garnished third parties within the limit of the amounts for which garnishment was circumvented;
- Among the banks' obligations to supply information, there is a new obligation to communicate, at the request of the fiscal bodies of the National Agency for Fiscal Management, all the turnovers and/or balance in the accounts opened with them, the identification data of the persons holding the right to signature, and if the debtor rented any value boxes.

Amendments brought to the Law No. 31/1990:

- As regards the authentication of the articles of incorporation, the notary public shall refuse authentication or, as the case may be, the person assigning a certified date shall refuse the requested operations, if, from the submitted document, it follows that the conditions on company's name availability and reservation and on the affidavit on holding the capacity of sole shareholder in one limited liability company are not met;
- Upon incorporation of the company and change of its registered office, the following documents shall be submitted to the Trade Registry:

- The document which certifies the right to use the registered office,

registered with the fiscal body from the National Agency for Fiscal Management having territorial competence over the registered office;

- A certificate issued by the fiscal body certifying that no other document was registered for the registered office, to attest the assignment of the right to use the same real estate, for free or for a certain consideration, or that there are no other agreements whereby the right to use the same was assigned, as the case may be;
- If it follows from the certificate issued by the fiscal body that there are already other documents registered with the fiscal body attesting to the assignment of the right to use the same real estate which is to be used as registered office, an authenticated affidavit on the compliance with the conditions on the registered office and the number of companies which may operate in the same registered office;

• Several companies may operate at the same registered office only if the real estate used as registered office, by its structure and net floor area, allows the operation of several companies in different rooms or separated areas;

• As regards the transfer of shares in limited liability companies, the following new conditions are provided:

- The decision approved by three quarters of the share capital of the shareholders' meeting regarding the transfer of shares to individuals from outside the company shall be submitted within 15 days with the Trade Registry Office, in order to be recorded in the register and published in the Official Gazette of Romania, Part IV;
- The Trade Registry Office shall immediately submit the decision, in electronic form, to the National Agency for Fiscal Management and the general departments of county and Bucharest public finance;
- Social creditors and any other persons damaged by the shareholders' decision on the transfer of the shares may file an opposition request whereby to ask the court to order, as the case may be, the company or the shareholders to repair the damage and, if case, to engage the civil liability of the shareholder intending to assign its shares;
- The transfer of shares shall operate, in the absence of any opposition, on the expiry date of the opposition term of 30 days, and if an

opposition was submitted, on the date when the decision to reject such opposition is communicated;

- The transfer of shares must be registered with the Trade Registry and the company's shareholders registry and has effect towards third parties only as of the registration date thereof. The act on the transfer of shares and the updated articles of incorporation with the identification data of the new shareholders shall be submitted to the Trade Registry Office and be registered with the Trade Registry in accordance with the general legal provisions.

Amendments brought to the Law No. 241/2005:

- The competent bodies now include the criminal investigation bodies of the judicial police, all having the power to make financial, fiscal or customs verifications in accordance with the law;
- In case of a person's unjustified refusal to present to the competent bodies its legal documents and goods, in order to prevent financial, fiscal or customs verifications, it is no longer necessary to summon such person 3 times before applying the punishment provided for the crime;
- Holding, without having the right to do so, stamps, bands or standard forms used in the fiscal sector and having a special status, is now also deemed to be a crime, along with the circulation thereof;
- As an additional measure, Law No. 508/2004 on the establishment, organization and operation in the Public Ministry of the Division for the Investigation of Organized Crime and Terrorism and Law No. 39/2003 on the prevention of and fighting against organized crime are amended by also including the competence to find the crimes of smuggling provided by the Romanian Customs Code, irrespective of the value of the damage, if they are perpetrated by persons who are members of organized criminal groups or associations or groups established for the purpose of perpetrating crimes.

Also in the context of improving the legal framework regulating the fight against tax evasion, amendments have been brought to GEO No. 195/2002. The new amendments entitle the employees of the National Agency for Fiscal Management to stop cars in order to exercise their control powers.

The Romanian Government has adopted the Resolution No. 768/2010 by which it

approves the amendments to the methodological norms to the Fiscal Code, most of them being determined by the amendments brought to the Fiscal Code by this legal enactment.

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2 Enactment of certain amendments to the tax regulations and of other financial-fiscal measures

Name of the enactment	Government Emergency Ordinance No. 58/2010 on the amendment and supplementation of Law No. 571/2003 on the Fiscal Code and other financial-fiscal measures (**"GEO No. 58/2010"**)
Publication	Official Gazette of Romania, Part I No. 431 of 28 June 2010
Entry into force	1 July 2010
Connections with other enactments	• Law No. 571/2003 on the Fiscal Code (the **"Fiscal Code"**) • Government Emergency Ordinance No. 8/2009 on granting holiday tickets (**"GEO 8/2009"**) • Law No. 142/1998 on granting holiday tickets (**"Law No. 142/1998"**)
Main provisions	By GEO No. 58/2010, certain provisions in the Fiscal Code are amended as follows: • Any professional income, other than salaries, is charged by the income tax quota (16%). In addition, individual contributions for social security, health social security and unemployment funds shall be owed for such income; • As regards the regulation of dependent activities, the lawmaker implemented two significant amendments. First, the legal definition was rephrased, so that, as of the effective date of GEO No. 58/2010, any activity meeting at least one of the criteria below is deemed as "dependent": - The income beneficiary is in a subordination relation as to the income payer, respectively the management bodies of the income payer, and complies with the labor conditions required by such (e.g. working hours); - In performing the activity, the income beneficiary uses the material basis of the income payer (appropriately equipped premises, special work or protection equipment, etc.);

- The income beneficiary contributes only with his/her physical powers or intellectual capacity, but not with his/her own capital;
- The income payer bears, in the interest of developing its activity, the travel expenses of the income beneficiary, such as the allowance for transfer-secondment in Romania and abroad, etc.;
- The income payer bears the paid leave allowance and the allowance for temporary work incapacity, on account of the income beneficiary;
- Any other elements reflecting the dependent nature of the activity.

Secondly, in case of reconsidering an activity as dependent (after the coming into force of GEO No. 58/2010), the tax income and the mandatory social contributions, as determined in accordance with the law, shall be recalculated and paid, the income payer and the income beneficiary being jointly liable in respect of such payment. In such case, the rules for determining the tax on the salary income earned outside the main job shall apply.

- According to GEO No. 58/2010, taxes paid in a foreign State shall be deducted subject to the following conditions:
- A double taxation treaty concluded by Romania and the foreign State is applicable;
- The legal entity submits the relevant document proving that it paid the tax in the foreign State.
- Chapter IV on dividend tax is amended, in the sense that a 16% tax quota shall be applied on the dividends distributed/paid to a Romanian legal entity. The same quota also applies to the amounts paid/distributed to open investment funds. However, this rule is not valid in the following cases:
- Dividends paid to another Romanian legal entity, if the beneficiary of the dividends holds, on the dividend payment date, at least 10% of the other legal entity's interests, for a period of 2 full years until and including the payment date hereof;
- Optional pension funds, respectively privately managed pension funds;
- Public administrative bodies exercising, in accordance with the law, the rights and obligations arising from the State's capacity of shareholder in such Romanian legal entities.

- The provisions on determining the net income out of intellectual property rights have also been amended. Such income is now determined by deducting, from the gross income, a deductible expense of 20% out of the gross income. The amendment is also applicable to the income resulting from the creation of monumental works of art, in the sense that the net income shall be calculated by deducting an expense of 25% out of the gross income;
- According to the provisions of GEO No. 58/2010 nursery tickets, holiday tickets, meal tickets and severance payments/aid to military staff shall be deemed as salary income and shall be taxed;
- The income under the form of interests for demand deposits/current accounts, as well as income resulting from clients' deposits, established in accordance with the laws on savings and collective crediting for housing, created as of 1 July 2010, shall be taxed by 16% of the amount thereof, the tax being final irrespective of the date when the legal relation was established;
- The net earning determined at the end of each quarter from the transfer of securities, others than shares and securities in private companies, shall be charged at 16%, the obligation to calculate and pay the tax representing an advance quarterly payment on account of the net annual taxable earning;
- Similarly, the quota for the taxation of earning resulting from forward rate agreements, as well as any other such operations, is 16%;
- Gambling income is charged by withholding a quota of 25% out of the net asset. The net income is calculated at the level of earnings made in one day by the same organizer/payer;
- The standard quota (i.e.: the standard value of the value-added tax) to be applied to the taxation base for taxable operations which are not tax-free or which are not subject to lower quotas shall be increased from 19% to 24%.

The Romanian Government has adopted the Resolution No. 791/2010 concerning the methodological norms to the legal provisions enacted through GEO No. 58/2010.

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3 Amendment of the regulations concerning the taxes on buildings and transport vehicles

Name of enactment	Government Emergency Ordinance No. 59/2010 on the amendment and supplementation of Law No. 571/2003 on the Fiscal Code (**"GEO No. 59/2010"**).
Publication	Official Gazette of Romania, Part I, No. 442 of 30 June 2010
Entry into force	1 July 2010
Connections with other enactments	Law No. 571/2003 on the Fiscal Code
Main provisions	The provisions of GEO No. 59/2010 brings the following relevant amendments to the taxes on buildings and transport vehicles: • The building tax for individuals holding several buildings is increased as follows: (i) by 65% for the first building in addition to the one where the domicile address is located, (ii) by 150% for the second building in addition to the one where the domicile address is located, respectively (iii) by 300% for the third and the following buildings in addition to the one where the domicile address is located; • This rule does not apply to individuals who own buildings further to legal succession; • The tax on transport vehicles is calculated by reference to the cylinder capacity thereof, by multiplying each group of 200 cm3 or fraction thereof with the appropriate amount expressly provided in GEO No. 59/2010; • In addition, the new regulation provides that, for the fiscal year 2010, the term for the payment of tax balance resulting from the enforcement of GEO No. 59/2010 is 31 December 2010. Moreover, individuals paying in full, by 30 September 2010, the taxes recalculated further to the enforcement of GEO No. 59/2010, benefit, for the resulting balance, from the measures determined by decision of the local bodies for year 2010 with respect to the reduction of such taxes.
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Insolvency Proceedings

Name of enactment	Law No. 169/2010 amending and supplementing Law No. 85/2006 on the insolvency proceedings (**"Law No. 169/2010"**)

Publication	Official Gazette of Romania, Part I, No. 505 of 21 July 2010
Entry into force	24 July 2010
Connections with other enactments	• Law No. 85/2006 on the insolvency proceedings ("**Law No. 85/2006**") • Law No. 381/2009 on the implementation of the preventative composition and ad-hoc mandate ("**Law No. 381/2009**")
Main provisions	The amendments brought by Law No.169/2010 are intended to render the insolvency legislation's implementation efficient by reducing certain procedural terms and reconsidering certain solutions to rapidly recover the creditors' receivables. To reduce the amount of the applications for the initiation of the insolvency proceedings, Law No. 169/2010 amends the threshold value of the receivable held by the creditor entitled to request the initiation of the insolvency proceedings from RON 30,000 to RON 45,000. In addition, the receivable has to be certain, liquid and payable for more than 90 days (instead of 30, as provided before by Law No. 85/2006). Law No. 169/2010 reduces a series of procedural terms, as follows: • The convening term for the appointment of the special administrator shall be 10 days from the initiation of the insolvency proceedings; • The term for the presentation of the grounds of the syndic judge's decisions shall be 10 days from issuance; • The term to file the final appeal against the decisions of the syndic judge shall be 7 days, and the term of settlement was reduced to 10 days; • The term set for the syndic judge to confirm the official receiver/liquidator shall be 3 days from the publication of the decision of the creditors meeting in the Insolvency Proceedings Gazette; • The first report of the official receiver shall have to be filed within 20 days from the appointment thereof, and the report on the causes and circumstances which led to the occurrence of the insolvency shall be filed within 40 days; • The challenge against the measures taken by the official receiver shall have to be filed within 3 days from the submission of the activity report, and the term set for the settlement of the challenge shall be 5

days;

- The term set to declare the receivables in order to have them registered in the table of receivables shall be 45 days, and to verify them shall be 20, and 10 days, respectively, in the simplified proceedings;
- The term to file the challenges in the preliminary table of receivables shall be 5 days from the publication thereof in the Insolvency Proceedings Gazette;
- The term to finalize the table of receivables shall be of 15 days.

Law No. 169/2010 provides that the committee of creditors shall also include the budgetary creditors, if their receivables are among the 20 receivables registered against the debtor, according to the value.

As to the debtor's application for the initiation of the insolvency proceedings, Law No. 169/2010 inserts new elements supplementing the provisions of Law No. 381/2009. Thus, if upon the expiry of the mandatory term to declare the insolvency state (*i.e.* 30 days from the occurrence of the insolvency state), the debtor is involved in good-faith extrajudicial negotiations with the creditors in order to have its debts rescheduled, the latter shall have the obligation to file an application with the court to be subjected to the provisions of Law No. 85/2006, within 5 days from the failure of negotiations. Same term shall also have to be complied with when the insolvency state of the debtor occurs throughout the negotiations held upon the proceedings regulated by Law No. 381/2009, even if serious indications point to the fact that the results of negotiations could be achieved in short time by the conclusion of an extrajudicial agreement.

Legal documents concluded throughout the performance of an extrajudicial agreement between the debtor and the creditors, particularly those regarding ownership transfers, establishment or conclusion of a security interest for a secured receivable, or early payments of the debts may not be cancelled if they are made in good-faith or constitute a damage or discrimination to other creditors. Similarly, the preferred payment of certain creditors, made in good-faith and with the intention to turn the debtor around, under the same conditions of an extrajudicial agreement with the creditors, may not be deemed as a premise to engage the liability of the members of the debtor's management bodies.

As to the debtor's reorganization plan, Law No. 169/2010 provides the possibility

to keep the payment terms provided under the credit or lease agreements of the debtor, even if they exceed the maximum 3-year term set for the performance of the reorganization plan. In addition, to accelerate the procedure for the approval of the reorganization plan, the stage of the syndic judge's approval in principle was eliminated.

Among the modalities of implementing the reorganization plan it was inserted the possibility of giving the debtor's assets in payment to the creditors, in exchange for the receivables they hold to the debtor's possessions, with the prior condition of obtaining the creditors' written approval.

Also, Law No. 169/2010 inserts the possibility of amending the reorganization plan at any point throughout the proceedings, in compliance with the approval conditions provided under Law No. 85/2006. If the initiative to amend the plan belongs to the debtor, the prior approval of the general meeting of the debtor's shareholders shall be required.

According to the latest amendments, the application to engage the liability of the management bodies' members shall form the object of a file separate from the merits file. Should a decision denying such action be issued, the official receiver/liquidator not intending to file a final appeal against it shall notify the creditors on its intention. If the general meeting or creditor holding more than half of all receivables decides that a final appeal has to be filed, the official receiver shall have to prepare the legal redress.

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Public Procurement and Concessions

Name of enactment	Government Emergency Ordinance No. 76/2010 amending and supplementing Government Emergency Ordinance No. 34/2006 on the award of public procurement agreements, public work concession agreements and service concession agreements ("**GEO No. 76/2010**")
Publication	Official Gazette of Romania, Part I, No. 453 of 2 July 2010
Entry into force	2 July 2010
Connections with other enactments	Government Emergency Ordinance No. 34/2006 on the award of public procurement agreements, public work concession agreements and service concession agreements, approved, as amended and supplemented by Law No. 337/2006, as amended and supplemented ("**GEO No. 34/2006**")
Connections with Community	Commission Regulation (EC) No. 1177/2009 of 30 November 2009 amending

legislation	Directives 2004/17/EC, 2004/18/EC and 2009/81/EC of the European Parliament and of the Council in respect of their application thresholds for the procedures for the award of contracts
Main provisions	GEO No. 76/2010 brought new amendments to the public procurement legislation, particularly with respect to the settlement of complaints, thresholds applicable in the case of the award of certain public procurement agreements, participation guarantee, broadening the "conflict of interests" notion.

1 Settlement of Challenges

According to the latest provisions, should a complaint be filed with the National Council for Solving Complaints ("**NCSC**"), and an action in court on the same object, throughout a public procurement procedure, the latter shall *ex officio* order that the cases be joined.

Unlike the previous wording, according to which the public procurement agreement could be concluded subsequent to the final and irrevocable settlement of the complaint due to the suspensive effect of the complaint against the NCSC decision or of the final appeal against the first instance decision, following the amendments brought by GEO No. 76/2010, if a complaint is lodged, the contracting authority may conclude the public procurement agreement subsequent to the issuance of decision by NCSC or, as the case may be, a first instance decision, however, in no case prior to the expiry of certain preliminary terms (Preliminary terms are such terms of 11, and 6 days, calculated from the date the notice on the result of the procedure is served, upon the expiry of which agreements falling under the scope of GEO No. 34/2006 may be concluded. The above terms shall be extended by 5 days, if the contracting authority fails to serve the notice on the result of the implementation of the procedure, by fax, or by other electronic means.) subject to the sanction of absolute nullity of the agreement.

Another major amendment aims at the insertion of certain provisions according to which, should NCSC dismiss the lodged complaint, the contracting authority shall retain a certain percentage from the participation guarantee of the compliant lodger, as per the forecasted value of the agreement.

As to the provisions regarding the exclusive jurisdiction of the Bucharest Court of Appeal over settling disputes in first instance regarding procedures of awarding agreements for services and/or works concerning the national interest transportation infrastructure, they were repealed by GEO No. 76/2010, therefore

the complaints regarding such procedures shall follow the ordinary procedures, before either NCSC, or the courts.

2 Amendment of Certain Thresholds

According to the latest provisions of GEO No. 76/2010, the request for bids procedure may be implemented by the contracting authority only if the forecasted value of the public procurement agreement, VAT not included, is equal to or less than the equivalent in RON of the following thresholds, thus increasing the thresholds related to service agreements and works agreements:

- EUR 100,000 for the supply agreement;
- EUR 125,000 for the services agreement, instead of EUR 100,000, according to the previous wording;
- EUR 1,000,000 for the works agreement, instead of EUR 750,000, according to the previous wording.

On the other hand, the thresholds triggering the applicability of the legislation on public procurements, related to works agreements awarded by a legal entity lacking the capacity as contracting authority, however directly financed/subsidized by more than 50%, by a contracting authority, were decreased from the equivalent in RON of EUR 5,000,000 EURO to the equivalent in RON of EUR 4,845,000, and to service agreements, respectively, from the equivalent in RON of EUR 200,000 to the equivalent in RON of EUR 193,000.

In addition, thresholds for the publication in the Official Journal of the European Union of the participation notices, and awarding notices, respectively, for the supply and service agreements awarded by contracting authorities performing relevant activities, and for works agreements, were amended as follows:

- EUR 387,000 for the supply or service agreement awarded by a contracting authority performing relevant activities, instead of EUR 400,000;
- EUR 4,845,000 for the works agreement, instead of EUR 5,000,000.

3 Participation Guarantee

As to the participation guarantee, GEO No. 76/2010 inserted additional provisions as compared to the former regulation on the public procurement legislation. Thus, the participation guarantee shall be provided by the bidder to protect the contracting authority from the risk of a potential misconduct of the former,

throughout the performance of the agreement.

The contracting authority shall have the obligation to request the bidders to provide the participation guarantee, to enable them to participate in the agreement awarding procedure. The awarding documentation prepared by the contracting authority shall have to include the following information:

- The amount of the participation guarantee of up to 2% of the forecasted value of the agreement, however not less than certain thresholds implemented by law;
- The validity term of the participation guarantee shall be at least equal to the minimum validity term of the bid.

4 Conflict of Interests

According to the amendments brought by GEO No. 76/2010, the notion of "conflict of interests" was broadened by the insertion of a new category of persons which are not entitled to be involved in the verification/assessment of applications/bids, *i.e.* persons which, in the exercise of the position they hold with the contracting authority are in the situation of the existence of a conflict of interests, as per Law No. 161/2003 on certain measures to secure transparency in the exercise of public office positions and in the business environment, prevention and punishment of corruption.

In addition, it was provided the sanction by exclusion from the awarding procedure of the bidder/applicant/associate bidder/subcontractor which:

- Has members in the board of directors/management or supervisory body and/or has shareholders which have the capacity as spouse, relative or in-laws up to the fourth degree, inclusively, or
- Has business relations with persons holding decision-making positions with the contracting authority.

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Real Estate

Name of enactment — Emergency Ordinance No. 64/2010 of 30 June 2010 amending and supplementing Law No. 7/1996 on cadastre and land registration ("**GEO No. 64/2010**")

Publication — Official Gazette of Romania, Part I, No. 451 of 2 July 2010

Entry into force — 2 July 2010

Connections with other enactments
Main provisions

Law No. 7/1996 on cadastre and land registration ("**Law No. 7/1996**")

GEO No. 64/2010 brings some significant amendments to Law No. 7/1996, in relation to the cadastre and land registration system, the powers of the National Agency for Cadastre and Land Registration and the organization of cadastral works and land book registration procedure.

1 General scope of the cadastre

GEO No. 64/2010 expressly provides that the cadastre and the land book form a unitary and binding system of national, technical, economic and legal records of real estates, designed to (i) identify the information related to real estates, (ii) ensure the registration of rights to immovable property, (iii) support the taxation system and real estate market, and to (iv) ensure the security of transactions with immovable property and facilitate mortgage loans.

GEO No. 64/2010 provides the basic elements of this unitary system, i.e.: parcel, construction and owner, the parcel being defined as "*the plot of land having a sole category of use*".

2 Organization of cadastral activity

GEO No. 64/2010 confers National Agency for Cadastre and Land Registration ("**NACLP**") new powers: managing the registry of street names and the geoportal of space information infrastructure ("**INSPIRE**") in Romania, also insuring the compatibility thereof with the INSPIRE geoportal of European Community. The new regulations introduced by GEO No. 64/2010 refer to the electronic access to the data provided by the land book and the cadastre registry. Thus, it introduces the possibility to communicate excerpts, copies of documents or layouts by email, according to Law No. 455/2001 on electronic signature.

GEO No. 64/2010 establishes the mandatory endorsement by NACLP of technical specifications related to the award of specialized works agreements; this form of control being exercised prior to the initiation of public procurement procedures.

3 Organizing the works of systematic registration with the cadastre registry and the land book

Another significant provision of GEO No. 64/2010 refers to the registration of possession over real estates and regulates this procedure, which shall be made based on the following documents:

- Authentic statement of the concerned person or, in communes without notary public offices, the statement of the concerned person,

whose signature shall be authenticated by the commune secretary;

- The certificate attesting to the real estate being registered with the farm registry and fiscal registries, issued by the mayor of the administrative-territorial unit;
- Fiscal certificate on taxes, local charges and other incomes to the local budget.

As regards the liens established over the real estates, it provides that holders of liens (mortgages, privileges, summons, seizures, litigations and any legal acts) registered with the registration ledgers are obligated to request the renewal of registration for every cadastral sector, within 30 days after they have been published at the city hall of the said administrative unit.

According to the new enactment, the right to assign or manage the real estate shall be registered with Part III of the Land Book; the old regulation did not require this registration. Furthermore, the assignment of receivables and the lease shall be registered regardless of their term (not only those concluded for more than 3 years).

GEO No. 64/2010 establishes the possibility to allot a part of the real estate (and not only a parcel). The joining shall be compliant with GEO No. 64/2010 and based on an authentic deed and cadastral documents. GEO No. 64/2010 stipulates that the joining of certain real estates encumbered with liens with other real estates shall be made with the consent of liens holders (the old law forbade such joining, the real estates disjoined and encumbered with liens becoming distinct and independent immovable property).

4 Land Book registration procedure

Land Book may be performed if the deed meets the following requirements: (i) its conclusion is in line with the legal forms; (ii) identifies the name/corporate name of the parties accurately and mentions the personal identification number, fiscal identification number, fiscal code or sole registration code, as the case may be, ascribed to them; (iii) establishes the identification of the real estate based on a land book number and a cadastral or topographic number, as the case may be; (iv) it is accompanied by a notarized translation if the act was not drafted in Romanian; (v) it is accompanied, as the case may be, by a copy of the land book excerpt for authentication purposes or by the liens' certificate based on which the document was drafted and (vi) it is accompanied by the document supporting the payment of land registration fee, unless duly exempted from the latter.

Under the new regulations provided by GEO No. 64/2010, the persons unsatisfied with the registrar's decision or the concerned persons may file an application for the revision of the resolutions admitting/dismissing the registrations, within 15 days from the ruling; the application shall be examined by the chief registrar. The acts issued by the chief registrar may then be challenged by a complaint which shall be settled by the local court having jurisdiction over the territory. The complaint may be lodged both with the territorial office and the court and it shall be registered *ex officio* with the land book. The complaint against the land book resolution, the action for justifying the land book registration, the action for rectification and the application of the person entitled to register its real right with the land book shall be settled without summoning the territorial office.

According to GEO No. 64/2010, the registration of constructions with the land book shall be based on both building permit and acceptance minutes upon the completion of works, as well as on a cadastral documentation. Moreover, the ownership right over constructions may also be fulfilled by execution phases, pursuant to: (i) the building permit, (ii) the minutes on the physical stage of construction building, endorsed by the representative of the public administrative authority which issued the building permit, as well as of (iii) cadastral documentation. The ownership titles issued based on the laws on restitution of land properties shall be registered with the land book *ex officio*.

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