

Legal Bulletin

March 2010

Administrative Law	1
Capital Markets	2
Employment and Social Security Law	3
Fiscal Law	6
Insolvency Law	7

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Administrative Law

Name of the enactment	Government Emergency Ordinance No. 12/2010 supplementing Government Emergency Ordinance No. 194/2002 on the regime of foreigners in Romania ("GEO No. 12/2010")
Publication	Official Gazette of Romania, Part I, No. 136 of 1 March 2010
Entry into force	1 March 2010
Connections with other enactments	Government Emergency Ordinance No. 194/2002 on the regime of foreigners in Romania ("GEO No. 194/2002")
Connections with the community legislation	EC Regulation No. 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention
Main provisions	<p>GEO No. 12/2010 brought a series of amendments to the legislation on the regime of foreigners in Romania for the implementation of the provisions regarding the small-scale border traffic. The amendments made in connection with GEO No. 194/2002 came as a result of the execution of the Agreement between Romania and the Republic of Moldova on the small-scale border traffic, ratified by Law No. 10/2010.</p> <p>According to the provisions of GEO No. 12/2010, the small-scale border traffic is performed in accordance with bilateral agreements concluded by Romania with third party neighboring states. This regime is applicable to foreign citizens holding a small-scale border traffic permit issued by the diplomatic missions and consulates of Romania in neighboring countries with which Romania concluded such agreements. Holders of the small-scale border traffic permits may enter the territory of Romania without holding an entry visa or other documents justifying the purpose and conditions of their stay.</p> <p>By virtue of the provisions of GEO No. 12/2010, the small-scale border traffic permit is the document entitling the border residents to cross the joint state border, under a small-scale border traffic regime. Should irregularities concerning the issuance and use of the small-scale traffic permit be found, this may be annulled/revoked abroad by the Romania's diplomatic missions or consulates,</p>

and, within the country's borders, by the authorities of the border police, upon the control performed when crossing the state border, or by the Romanian Office for Immigration. Furthermore, GEO No. 12/2010 provides sanctions which apply in case the provisions on the small-scale border traffic are not complied with; among such sanctions: foreign citizens who fail to comply with the conditions of this regime shall be prohibited from entering the territory of Romania for a certain period of time

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Capital Markets

Name of the enactment

Regulation No. 4/2010 on the registration with the Romanian National Securities Commission ("CNVM") and operation of Business Entity "Fondul Proprietatea" - S.A., and trading of the shares it issues (the "Regulation")

Publication

Official Gazette of Romanian, Part I, No. 161 of 12 March 2010

Entry into force

12 March 2010

Connections with other enactments

- Law No. 297/2004 on the capital market;
- Law No. 247/2005 on the reform in the fields of ownership and justice, and certain related measures;
- CNVM Regulation No. 15/2004 on the authorization and operation of investment management companies, undertakings for collective investments in transferable securities and trustees.

Main provisions

The Regulation provides the obligation of registering S.C. Fondul Proprietatea S.A. ("FP") with CNVM as a special UCITS type, under the form of a closed investment company, established to award compensations for real estates which may not be restituted in kind, different from other UCITS categories.

Registration shall be performed on the basis of documents usually requested to UCITS, plus the administration agreement, title over the premises housing the registered headquarters, audit agreement and statement of internal auditors – CNVM being given the possibility of requesting additional documents or information.

As FP's operation is concerned, the Regulation provides a set of rules, the most important concerning:

- Endorsement by CNVM of amendments to FP's documents;

- Computation of FP's net assets;
- Assessment of FP's assets, as per the quality of such assets, using different methods;
- Decision-making process in general meetings of shareholders.

The Regulation also provides the conditions and obligations which have to be fulfilled by the Investment Management Company managing FP, should the former be established in another Member State (authorized branch in Romania, headquarters, technical equipment, heads, and internal regulations).

In addition, the Regulation also includes rules on the operation of the Investment Management Company, *i.e.*:

- Endorsement by CNVM of the amendments to the Investment Management Company's documents;
- Supervision by CNVM and reporting obligations of the Investment Management Company.

Furthermore, the Regulation provides a set of obligations regarding the approval of FP's shares for trading. As the trading of FP's shares is concerned, the Regulation provides that the rules of the market operator managing such market shall be applicable.

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Employment and Social Security Law

1 Measures to stimulate creation of new workplaces and decrease unemployment rate

Name of the enactment

Government Emergency Ordinance No. 13/2010 regulating certain measures to stimulate creation of new workplaces and decrease unemployment in 2010 ("**GEO No. 13/2010**")

Publication

Official Gazette of Romania, Part I, No. 136/01.03.2010

Entry into force

1 March 2010

Main provisions

GEO No. 13/2010 adopted a series of social measures as a result of the effects of the economic and financial crisis over the employment market in Romania. Thus, according to the provisions of the ordinance, employers shall benefit from a social security tax payment exemption for a 6-month term if they hire unemployed persons registered with the unemployment agencies at least 3 months prior to

the establishment of employment relations in newly created workplaces. Social benefits shall be granted to employers provided that they maintain the employment relations for a minimum 12-month term.

Exemption from the payment of social security taxes shall not be granted to:

- Employers which, during the last 6 months prior to the establishment of employment relations, had employment relations with unemployed persons, registered with employment agencies at least 3 month prior to the establishment of the employment relations;
- Employers which establish employment relations with the persons as referred to herein above, for positions which became vacant as a result of the termination of employment relations in the last 6 months prior to the establishment of the employment relations.

According to the provisions of GEO No. 13/2010, "social security taxes" shall mean the unemployment security tax, social security tax, occupational accidents and diseases security tax, tax paid to the fund securing the payment of salary receivables, social health security tax, including the tax for leaves and social health indemnities.

Social benefits granted by virtue of GEO No. 13/2010 shall be annulled; thus, employers shall have the obligation to pay all amounts they have been exempted from paying, should they fail to comply with the requirements of the ordinance.

The period of time throughout which the employers shall be exempted from paying social security taxes shall be deemed as a subscription period without the payment of the contribution. This period shall be taken into account upon the establishment of the 24-month term prior to the registration of the application for granting the unemployment indemnity, and upon the achievement of the minimum subscription period in the unemployment security system.

The social measures provided under GEO No. 13/2010 shall apply throughout 2010.

2 Other measures in the employment and social security field

Name of the enactment	Law No. 49/2010 on certain measures in the employment and social security field ("Law No. 49/2010")
Publication	Official Gazette of Romania, Part I, No. 195 of 29 March 2010
Entry into force	1 April 2010

Connections with other enactments

- Law No. 53/2003 – Labor Code (the “**Labor Code**”);
- Law No. 19/2000 on the public pension and other social security rights system (“**Law No. 19/2000**”);
- Law No. 188/1999 on the Statutes of the Civil Servants (“**Law No. 188/1999**”).

Main provisions

Law No. 49/2010 brought a series of amendments to certain employment enactments, *i.e.* Law No. 19/2000, Law No. 188/1999 and Labor Code.

As Law No. 19/2000 is concerned, certain provisions regarding the age limit retirement conditions were amended. Thus, in accordance with the new regulations, the retirement application together with the documents attesting to the fulfillment of the retirement conditions shall be filed by the applicant, or as the case may be, by the employer with the territorial pension house where the domicile of the applicant is located, 30 calendar days prior to the fulfillment of the retirement conditions. In addition, the decision of the territorial pension house shall be communicated in writing to both the person requesting the retirement, and the employer within 5 days from its issuance.

In accordance with the provisions of Law No. 49/2010, the employment relation of public servants shall *de jure* cease upon the cumulative fulfillment of the standard age requirements and of the minimum retirement subscription period. The new amendments to Law No. 188/1999 eliminated the possibility of a *de jure* cessation of the employment relations upon the communication of the retirement decision for age limit, anticipated retirement, partial anticipated retirement or invalidity of the public servant.

The new amendments to the Labor Code aim at the *de jure* termination of the individual employment agreement upon the cumulative fulfillment of the standard age requirements and of the minimum retirement subscription period. Prior to the amendment of the Labor Code, the individual employment agreement was being terminated upon the communication of the retirement decision for age limit, anticipated retirement, partial anticipated retirement or invalidity of the public servant.

According to the provisions of Law No. 49/2010, in certain situations, the *de jure* termination of the individual employment agreement shall be established in writing within 5 business days from the occurrence thereof by the decision of the employer and shall be communicated to the persons in such situation within 5

business days.

In addition, the new amendments to the Labor Code repealed the provisions regarding the employee's layoff for reasons which may be attributed to the employee in case he/she fulfills the standard age requirements and subscription period and did not apply for retirement.

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Fiscal Law

Name of the enactment

Emergency Ordinance No. 22/2010 amending and supplementing Law No. 571/2003 on the Fiscal Code ("GEO No. 22/2010")

Publication

Official Gazette of Romania, Part I, No. 201 of 30 March 2010

Entry into force

30 March 2010

Connections with other enactments

Law No. 571/2003 on the Fiscal Code ("Fiscal Code")

Main provisions

GEO No. 22/2010 implements a regime overriding the provisions of the Fiscal Code as regards the obligation of undertakings to pay the profit tax in advance for the period 2010-2012.

Thus, according to GEO No. 22/2010, undertakings, other than Romanian legal entity banking companies, and the Romanian branches of foreign legal entity banks, shall have to declare and pay the quarterly profit tax until the 25th, inclusively, of the first month following the quarter for which the tax is calculated, if not otherwise provided.

In addition, GEO No. 22/2010 provides that, in the case of such taxpayer categories, for quarters I to III, quarterly profit tax is compared to the minimum tax provided under Art. 18, para. (3) of the Fiscal Code, accordingly recalculated for such quarter, by dividing the minimum annual tax by 12 and multiplying it with the number of months in such a quarter.

To set the final profit tax due, the annual profit tax is compared with the minimum annual tax provided under Art. 18 para. (3), and, if the taxable period starts or ends throughout the year, in order to set the final profit tax due, the profit tax related to such period is compared with the minimum annual tax provided under Art. 18 para. (3), accordingly recalculated for the same period.

Another exception is the category of Romanian legal entity banking companies, and Romanian branches of foreign legal entity banks established during the previous year, which did not have to pay the minimum tax and which, at the end

of the financial year of their establishment, register a fiscal loss. According to GEO No. 22/2010, this category of taxpayers shall make, on a quarterly basis, advance payments of the profit tax amounting to $\frac{1}{4}$ of the minimum annual tax provided under Art. 18 para. (3), accordingly recalculated for the taxable period of the year in which they were established.

Such overriding regime shall be applied upon the calculation of the profit tax starting from 2010. At the same time, starting from 2012, such categories of undertakings shall restart using the advance payment system.

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Insolvency Law

Name of the enactment

Law No. 25/2010 amending and supplementing Law No. 85/2006 on the Insolvency Proceedings (the "Law")

Publication

Official Gazette of Romania, Part I, No. 145 of 5 March 2010

Entry into force

8 March 2010

Connections with other enactments

Law No. 85/2006 on the Insolvency Proceedings ("Law No. 85/2006")

Main provisions

The law provides the obligation of the debtors holding or administering one or several websites to publish information on the insolvency status.

Information refers to the company's status, and to the number, date and court which issued the decision initiating insolvency proceedings against the debtor. The publication term shall be 24 hours from the communication of the decision initiating insolvency proceedings.

Failure to comply with such obligation shall be deemed a misdemeanor and shall be punished by fine ranging from RON 10,000 to RON 30,000.

The authorities competent to establish the misdemeanor and enforce the corresponding sanction shall be the specialty authorities of the National Agency for Tax Administration; they shall so proceed *ex officio*, or at the request of the syndic judge, official receiver/liquidator or of any interested person.

The law also provides as sanction for the failure to comply with such obligation, the possibility of the debtor's legal representatives to remedy the damages caused to third parties acting in good faith, without any prejudices to the debtor's assets.

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