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Legal Bulletin

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Legal Bulletin

Commercial Arbitration

Name of the enactment	Decision No. 4/2011 of the Chamber of Commerce and Industry of Romania for the amendment and supplementation the Rules of arbitral proceedings of the Court of International Commercial Arbitration and for the approval of the Regulation on the organization and operation of the Court of International Commercial Arbitration of the Chamber of Commerce and Industry of Romania (the "**Decision**")
Publication	Official Gazette of Romania, Part I, No. 160 of 4 March 2011
Entry into force	4 March 2011
Connections with other enactments	Rules of arbitral proceedings of the Court of International Commercial Arbitration (the "**Arbitration Rules**")
Purpose	Considering the increasing role of commercial arbitration among the means of dispute settlement, the Decision includes various amendments to the current arbitration rules, as well as the approval of a regulation concerning the operation of the Court of International Commercial Arbitration of the Chamber of Commerce and Industry of Romania (the "**Regulation**")
Main provisions	The amendments brought to the Arbitration Rules mainly refer to:

- The obligation to pay and produce evidence to the payment of the registration fee (currently amounting to EUR 150) upon submission of the request for arbitration. In this respect, under the amended Arbitration Rules, the arbitration request delivered personally shall not be registered in the absence of evidence as to the payment of the registration fee and shall be immediately given back to the claimant. If the request for arbitration is delivered by mail, without evidence to the payment of the registration fee, the Secretariat of the Court of Arbitration shall inform the claimant on such requirement, as soon as possible, granting him a five-day term to remedy such shortcoming. If the latter fails to produce evidence thereto, the request shall be returned to the claimant. Nevertheless, depending on the circumstances, the five-day term may be reasonably extended by the president or prime vice-president of the Court of Arbitration and, only

if in these circumstance such financial obligations are not met, shall the request be returned to the plaintiff, without infringing his right to file a new request for arbitration;

- The possibility to challenge for annulment the resolutions of the arbitral tribunal providing for the following categories of measures:

- Stay of arbitration proceedings;
- Prejudgment or temporary measures; and
- Rejection of the unconstitutionality plea, as ungrounded, under the law.

- A new situation in which the annulment of the arbitral award may be requested, namely when, after the issuance of the arbitral award, the Constitutional Court ruled on the plea raised in such case, upholding the unconstitutionality of the law, ordinance or provision of a law or ordinance which made the object of such plea or of other provisions of the challenged deed, which are necessarily and obviously inseparable from the provisions of the document mentioned in the plea. In this case, the amended Arbitration Rules establish that the term for filing an action for annulment in the newly filed case is three months as of the publication of the Constitutional Court decision in the Official Gazette of Romania, Part I.

The Regulation also includes a series of rules and procedures on the organization and operation of the Court of International Commercial Arbitration of the Chamber of Commerce and Industry of Romania (the "**Court**"), among which the most significant are:

- Explanations related to the powers of the Court and to the fact that this is the institution that deals, among others, solely with the organization and administration of dispute settlement, not with the actual settlement of such disputes – such task is to be solely undertaken by the arbitral tribunals;
- Details on individuals entering on the Court's arbitrators list;
- Explanations related to the requirements, cases and procedures for removing an arbitrator from the arbitrators list;
- Details on the Court College's, Court Plenum's (made up of all the

arbitrators on the Court list) and on the Court Secretariat attributions;

- Definition of the authority appointing the arbitrators, which authority is represented by the president of the National Chamber, as well as the empowerment of the latter with the exclusive power to appoint the umpire;
- Delimitation of the arbitrators' main obligations, by paying special attention to their availability. Thus, the Regulation expressly states that the arbitration of the cases in which they were elected or appointed shall become the arbitrator's/umpire's priority by comparison to any other activity thereof, also providing monetary sanctions to be applied when the arbitrator/umpire delays the fulfillment of his obligations.

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Competition Law

Name of the enactment

Order of the Competition Council No. 424/2011 implementing the Instructions on application of the competition rules to access agreements in the field of electronic communications – legal framework, relevant markets and principles (the "**Instructions**")

Publication

Official Gazette of Romania, Part I, No. 197 of 22 March 2011

Entry into force

22 March 2011

Connections with other enactments

- Competition Law No. 21/1996 (the "**Law**")
- Treaty on the functioning of the European Union (the "**Treaty**")

Main provisions

By the Instructions, the Competition Council mainly details:

- **The general framework by which the authority intends to protect the rights and interests of undertakings and users according to the competition rules:**

  As to the communication field, the Competition Council shall conduct actions (either following a complaint, or *ex oficio*) in case of suspicions of breach of Arts. 5 and 6 of the Law, and, respectively, of Arts. 101 and 102 of the Treaty (if the common market is affected). If a breach is demonstrated, such actions shall be concluded by charging fines according to the provisions of the Law (*i.e.* of up to 10% of the annual turnover). Upon performing its activity, the Competition Council shall

cooperate with the National Authority for Management and Regulation in Communications ("**ANCOM**"), in its capacity as regulatory and supervisory authority;

- **The way of defining the market in the communications field:**

  The relevant market is defined according to the general rules issued by the authority to this end. Without giving a definition in advance for the relevant markets applicable to this field, the competition authority distinguishes under the Instructions between at least two relevant markets, *i.e.*: (i) the market of the service provided to the end users, and (ii) the market of the access to the facilities required to provide this service. From a geographical standpoint, the market shall be determined by the area in which the undertakings may offer their services (representing the product market) under similar competition conditions, taking into account licenses or special or exclusive rights of the undertakings;

- **Principles to be followed by the authority upon implementing the competition rules to assist the undertakings present on the communications market to comply with the requirements of the Law:**

- The competition authority shall analyze the communications field from the standpoint of the competition norms. Such norms shall also be applicable to agreements or practices (conditionally) approved or authorized by ANCOM. Throughout the analysis, the Competition Council shall check (i) whether the undertakings present on the communications market hold a dominant position and the risk of an abusive conduct thereof, and (ii) the restrictions included in or arising out of the access agreements;

- The existence of a dominant position shall be checked on a case-by-case basis. In addition to the market share, the control of access to facilities is given as example of an element indicating the existence of such position. Furthermore, the minimum conditions on collective dominance are detailed (the members of oligopoly may be aware of the conduct of the other members, the tacit coordination among them is sustainable in time, and the reaction of the competitors/consumers may not endanger the results to be expected further to the implementation of the common policy);

- The Instructions detail the forms in which the abuse of dominant position is exercised in the communications field, such as: refusing to grant access to facilities and establishing unfair contractual clauses, discrimination, withdrawal of access, bundling services, charging excessive and ruinous prices, activity cross-financing;
- At the same time, agreements on communications markets shall be checked by the competition authority for securing a competitive environment. As to access agreements, they generate positive results as they are not restrictive if they provide unlimited access or if they may improve access on the downstream markets. If the parties establish exclusivities, they have to produce objective justifications, as such clauses are considered inherent to the access agreements.

Repealed enactments

Instructions on the application of the competition rules to access agreement in the field of electronic communications – legal framework, relevant markets and principles, included in Appendix No. 4 to Order of the Competition Council No. 61/2004.

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Employment and Social Security Law

1 Working procedure for the release of labour cards

Name of the enactment

Order No. 1083/2011 approving the Working Procedure for the release of the labor cards belonging to the employees of the employers for which the territorial labor inspectorates were keeping, filling and certifying the lawfulness of the entries made in the labor cards ("**Order No. 1083/2011**")

Publication

Official Gazette of Romania, Part I, No. 171 of 10 March 2011

Entry into force

10 March 2011

Connections with other enactments

- Law No. 53/2003 – Labor Code
- Emergency Ordinance No. 123/2010 repealing Law No. 130/1999 on certain measures to protect employees

Main provisions

Order No. 1083/2011 regulates the procedures for the release of the labor records belonging to the employees of the employers for which the territorial labor inspectorates were keeping, filling and certifying the lawfulness of the entries made in the labor records. The working procedure contemplates two cases: (i) release of labor records kept and filled in by territorial labor inspectorates, and (ii)

release of labor records held by employers that were given approval to keep and fill them in at their headquarters.

According to the provisions of Order No. 1083/2011, labor records kept and filled in by territorial labor inspectorates shall be updated until 31 December 2010. They shall be handed over to the employers or holders/duly appointed representatives by 30 June 2011.

As to the labor records held by employers that were given approval to keep and fill them in at their headquarters, they shall be updated with the relevant data until 31 December 2010, and such data shall be certified by the territorial labor inspectorates. Subsequent to certification and endorsement of the labor records submitted by the employers to the territorial labor inspectorates, they shall be returned to the employers by 31 March 2011.

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2 Amendments brought to the Labor Code

Name of the enactment	Law No. 40/2011 amending and supplementing Law No. 53/2003 – Labor Code ("**Law No. 40/2011**")
Publication	Official Gazette of Romania, Part I, No. 225 of 31 March 2011
Entry into force	30 April 2011
Connections with other enactments	Law No. 53/2003 – Labor Code (the "**Labor Code**")

Main provisions

Law No. 40/2011 brought substantial amendments to the Labor Code, amendments that were firstly aimed at rendering more flexible certain institutions therein regulated.

Among the main novelties contemplated by Law No. 40/2011:

- **Conclusion of the individual employment agreement:**

- Written form of the agreement is required *ad validitatem*: according to the individual employment agreement, the conclusion of the individual employment agreement in writing is a condition for the agreement to be valid. The obligation to conclude the individual employment agreement in writing shall be incumbent upon the employer;

- Trial period: the duration of the trial period when becoming employed underwent major amendments as well. Consequently, as

the operating staff is concerned, a trial period of maximum 90 days may be established to verify the employee's abilities, as opposed to the 30-day period provided under the former regulation. As to the management positions, the trial period may not exceed 120 days, 30 days more than under the former regulation;

- Overtime: According to the new amendments brought to the Labor Code by Law No. 40/2011, overtime shall be compensated by paid off-hours within the following 60 calendar days after the performance thereof. In the former regulation, overtime was compensated by paid off-hours within the following 30 days. Another novelty brought by Law No. 40/2011 is the employers' possibility during periods of activity decrease to grant paid off-days to compensate for the overtime that shall be performed within the following 12 months;
- The conclusion of individual fixed-term employment agreements: as to individual fixed-term employment agreements, according to the new provisions of Law No. 40/2011, they may be concluded for a maximum period of 36 months. The former regulation provided a maximum term of the individual fixed-term employment agreements of 24 months. Individual fixed-term employment agreements concluded between the same parties within 3 months from the termination of an employment agreement shall be deemed successive agreements and may not exceed 12 months each.

- **Temporary decrease in the employer's activity:**

A major amendment brought by the new law to the Labor Code is the employer's possibility to reduce the working schedule from 5 to 4 days a week, subject to a corresponding decrease in the salary, should the activity be reduced due to economic, technological, structural or similar reasons, for periods exceeding 30 business days.

Such a step may be taken until the reparation of the situation which caused the schedule reduction and only subsequent to a prior consultation with the representative trade union at the level of the unit or employees' representatives.

- **Collective lay-offs:**

In collective lay-off matters, according to the new amendments brought by Law No. 40/2011, the differentiation between employees shall be performed by first applying the performance criteria, by assessing the achievement of the

performance targets thereof, and only then by applying the social criteria provided under the Labor Code. Another amendment applicable in matters of collective lay-offs is the employee's possibility to be reemployed in the reinstated position with priority, without examination, trial or trial period within 45 calendar days from the lay-off. The former regulation provided that the employer making collective lay-offs was not entitled to employ other persons on the positions of the laid-off employees for 9 months from such lay-off. According to the new law, the provisions on collective lay-off shall not apply to the employees working in public institutions and authorities.

- **Harsher penalties:**

As to the penalties to be enforced should the provisions of the Labor Code are breached, Law No. 40/2011 increased the fines to be applied if the employers commit misdemeanors. In addition, under the new regulation, the range of penalties was extended by classifying certain acts of the employers as offenses, such as fixing salaries below the minimum gross salary limit or employing more than 5 persons without the conclusion of an individual employment agreement.

- **Collective bargaining agreement:**

According to the new provisions of Law No. 40/2011, the validity term of the collective bargaining agreements and addenda concluded starting with the entry into force of the law and until 31 December 2011 may not exceed 31 December 2011. After this date, collective bargaining agreements and addenda shall be concluded for a term set under a special law.

As to collective bargaining agreements in progress upon the entry into force of Law No. 40/2011, they shall be valid until the expiry of the term for which they were concluded.

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Energy Law

1 Mandatory quota for the purchase of green certificates

Name of enactment

Order of the Romanian Energy Regulatory Authority No. 13/2011 adjusting the mandatory quota for the purchase of green certificates by electricity suppliers in 2010 ("**Order No. 13/2011**")

Publication

Official Gazette of Romania, Part I, No. 165 of 8 March 2011

Entry into force	8 March 2011
Connections with other enactments	Law No. 220/2008 establishing the system of promoting the generation of energy from renewable sources, republished as amended and supplemented ("**Law No. 220/2008**")
Main provisions	According to the provisions of Art. 4 (9) of Law No. 220/2008, the Romanian Energy Regulatory Authority shall adjust at the beginning of each year the mandatory quota for the purchase of green certificates for the previous year. Consequently, in 2010, the mandatory quota for purchase of green certificates was fixed at 1.56689% of the electricity supplied to end users. In achieving this quota, S.C. OPCOM S.A. held an additional green certificate trading session during 18 March-23 March 2011. By way of derogation from the rules governing the green certificate market, undertakings which had to fulfill their mandatory quota may also participate in this additional session as sellers (*i.e.* suppliers, including the producers powering the consumers connected directly to the plant's bars), and the trading price shall be the closing price of the green certificate centralized market. At the same time, Order No. 13/2011 provides that the certificates for which an offer was made and remained unsold during the above additional session shall be carried forward in the following year(s).

2 Thresholds for trading green certificates

Name of enactment	Order of the Romanian Energy Regulatory Authority No. 8/2011 updating the thresholds for trading green certificates, applicable in 2011 ("**Order No. 8/2011**")
Publication	Official Gazette of Romania, Part I, No. 156 of 3 March 2011
Entry into force	3 March 2011
Connections with other enactments	Law No. 220/2008 establishing the system of promoting the generation of energy from renewable sources, republished, as amended and supplemented ("**Law No. 220/2008**")
Main provisions	According to the provisions of Art. 11 (3) and Art. 12 (3) of Law No. 220/2008, starting from 2011, the Romanian Energy Regulatory Authority ("**ANRE**") shall annually index by the average inflation rate registered in the month of December of the previous year and calculated at the level of EU 27 the following: (i) the limits in which green certificates should be traded, *i.e.* the minimum limit of EUR 27/certificate and maximum limit of EUR 55/certificate, and (ii) the amount of EUR 110 which the energy supplier has to pay for each green certificate traded, should he fail to meet the required annual quota.

Consequently, in 2011, ANRE established by Order No. 8/2011 the following indexed value for trading a green certificate:

- Minimum amount of RON 118.33, the equivalent of EUR 27.567; and
- Maximum amount of RON 241.04, the equivalent of EUR 56.155.

In addition, in case the suppliers fail to meet the mandatory quota for the purchase of green certificates, ANRE established an indexed amount of RON 482.09, the equivalent of EUR 112.31 for each green certificate that has not been purchased.

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Taxation

Name of the enactment

Decision No. 150/2011 amending and supplementing the Methodological Norms for the implementation of Law No. 571/2003 on the Fiscal Code, approved by Government Decision No. 44/2004, and amending and supplementing Government Decision No. 870/2009 approving the Methodological Norms for the implementation of Government Emergency Ordinance No. 77/2009 on the organization and operation of gambling (**"GD No. 150/2011"**)

Publication

Official Gazette of Romania, Part I No. 150 of 1 March 2011

Entry into force

1 March 2011

Connections with other enactments

- Government Decision No. 44/2004 approving the Methodological Norms for the implementation of Law No. 571/2003 on the Fiscal Code
- Government Decision No. 870/2009 approving the Methodological Norms for the implementation of Government Emergency Ordinance No. 77/2009 on the organization and operation of gambling
- Government Emergency Ordinance No. 117/2010 amending and supplementing Law No. 571/2003 on the Fiscal Code and regulating certain financial and fiscal measures(**"GEO No. 117/2010"**)

Main provisions

In the light of the amendments brought by GEO No. 117/2010 to the Fiscal Code, a methodology was required to clarify how the new provisions should be implemented, particularly with respect to the following categories of taxes and duties: income tax, tax on profit, tax on the income of microenterprises, tax on the income obtained by nonresidents in Romania, tax on the representative offices established by foreign companies in Romania, value added tax, excise duties and other special duties, mandatory contributions to social security, and

the insertion of certain provisions on the fiscal regime of the gambling activity.

We shall specially refer below to the essential provisions inserted by GD No. 150/2011:

- **Tax on profit:** it is clarified the manner of determining/finalizing the taxable income for the periods 1 January 2010 – 30 September 2010 and 1 October 2010 – 31 December 2010, in the sense that it exemplifies how the calculation elements are divided and clarifies the rules of recovering the fiscal loss, as per the fiscal year/period to which the loss refers. In addition, it is provided the manner of submitting the tax on profit statement for 2010, as per the obligation of each category of taxpayers of submitting such statement. GD No. 150/2011 provides that, when **a legal person residing in Romania makes profits in a foreign State via a permanent office** which, according to the provisions of the convention for the avoidance of double taxation concluded by Romania with another State, may be taxed in the other State, and such convention provides the "*exemption method*" as a mean to avoid the double taxation, the profits shall be tax exempted in Romania. Such profits shall be tax exempted if the supporting document attesting the payment of the tax abroad issued by the relevant authority in the foreign State is produced.

- **Income tax:** these provisions are meant to harmonize the norms of GD No. 150/2011 with the amendments brought by GEO No. 117/2010, in the sense that it clarifies the following issues: (i) calculation of the net annual income, (ii) the relevant fiscal authority's obligation to calculate the net annual taxable income and net annual taxable earnings, and (iii) certain issues of a technical nature. For instance, should the taxpayer perform several activities or a single activity but in several places, the annual income shall be calculated by summing the level of the income norms at the place where each activity is performed, and at each place where the activity is performed, respectively. Unlike the former regulations, the income statement shall be submitted between **1 January** and **15 May** including the year following the year when the income was made, at the relevant fiscal authority. In addition, the taxpayers making income abroad which are taxable in Romania shall have to state such income by 15 May including the year following the year when the income was made.

- **Tax on the income of microenterprises:** GD No. 150/2011 details the conditions which have to be fulfilled to classify as microenterprise. Moreover, additional clarifications are brought with respect to: (i) establishment of certain rules related to keeping the number of employees, (ii) establishment of the calculation basis for the tax on the income of microenterprises, and (iii) Romanian legal entities which may not choose for the payment of the tax on the income of microenterprises, etc.
- **VAT:** express provisions are inserted with respect to exercising the right of having the VAT deducted by the beneficiary of certain deliveries of goods/services provision during the enforcement proceedings by a taxpayer declared inactive by order of the President of the National Agency for Fiscal Administration, or by a taxable entity undergoing temporary inactivity, registered with the Trade Registry. In addition, there are regulated the situations in which taxable persons which are not residing in Romania, but are registered for VAT purposes according to the Fiscal Code, are entitled to exercise their deduction right by the VAT reimbursement for the tax related to purchases performed prior to the registration for VAT purposes (if they did not request reimbursement of the tax for such purchases according to Directive 2008/9/EC laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State).
- **Excise duties and special duties:** (i) the "*retail sale price*" concept was reviewed, (ii) the provisions on exemptions for processed tobacco, and the provision on the reduced quota for energy products used as heating fuel or motor fuel were eliminated.
- **Gambling:** it is been established the obligation of the gambling organizers to state and pay within the legal term, both the taxes related to gambling activities, and the amounts collected as access tickets.

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Norms of Legislative Technique

Name of the enactment	Law No. 29/2011 amending and supplementing Law No. 24/2000 regarding the norms of legislative technique for drafting enactments ("**Law No. 29/2011**")
Publication	Official Gazette of Romania, Part I, No. 182 of 15 March 2011
Entry into force	18 March 2011
Connections with other enactments	Law No. 24/2000 regarding the norms of legislative technique for drafting enactments
Main provisions	Law No. 29/2011 institutes requirements for complying with the European Convention on Human Rights and with the additional protocols thereto, ratified by Romania (the "**Convention**") and with the case law of the European Court of Human Rights (the "**ECHR**") as regards the substantiation, systematization and drafting new enactments. Thus, the following new obligations are instituted: • The substantiation of draft enactments must also take into account the ECHR case law; • The preliminary assessment of the impact of the new regulations on the fundamental human rights and freedoms; • Correlating the new enactments with the Convention provisions and the ECHR case law; • The research conducted in view of substantiating the new enactment must also include the review of ECHR case law; • Amendment of national acts containing provisions that are inconsistent with the ECHR case law; • Within 3 months from the ECHR judgment, the Government shall submit to the Parliament the draft law for amending and supplementing or repealing the new enactment or a part thereof, that are contrary to the Convention provisions of ECHR case law.
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Civil Liability of Auditors

Name of the enactment	Decision No. 17/2010 of the Higher Council of the Council for Public Supervision of the Statutory Audit Activity approving the Regulation on the limitation of the civil liability of statutory auditors and audit companies (the "**Regulation**")

Publication	Official Gazette of Romania, Part I, No. 176 of 14 March 2011
Entry into force	14 March 2011
Connections with other enactments	Government Emergency Ordinance No. 90/2008 on the statutory audit of the annual financial statements and the consolidated annual financial statements, as further amended and supplemented
Main provisions	The Regulation lays down the conditions and limitations of liability for statutory auditors and audit companies for damages arising from the performance of the audit agreement or from the *bona fide* use by the audited client or by a third party of the audit report issued under the audit agreement. Liability is only limited to the damages caused with indirect intent or negligence and it differs depending on the audited clients. In the case of public interest entities (credit institutions; insurance, insurance-reinsurance and reinsurance companies; the entities regulated and supervised by the National Securities Commission; trading companies having securities approved for trading on a regulated market; national companies and undertakings; legal entities belonging to a group of companies and which fall within the scope of consolidation of a parent company that applies the international financial reporting standards; legal entities, others than the ones referred to above, which benefit from non-reimbursable or state secured loans), liability is limited to 5 times the audit fee established in the audit agreement. As regards the other clients, liability is limited to 3 times the audit fee. For damages caused with direct intent (when the damage was pursued), liability is not limited. The limitations referred to above are cumulated maximum amounts related to damages arising from the same audit agreement, regardless of the number of injured persons or the total value of the damage. The auditors' liability is divisible and proportional to their actual contribution to the proven damage and is subject to an expiry term of 3 years from the issue date of the audit report.
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Civil Procedure

Name of the enactment	Law No. 8/2011 dismissing Government Emergency Ordinance No. 42/2009 amending the Civil Procedure Code ("**Law No. 8/2011**")
Publication	Official Gazette of Romania, Part I No. 159 of 4 March 2011

Entry into force	7 March 2011
Connections with other enactments	• Civil Procedure Code of Romania • Law No. 202/2010 on certain measures for expediting dispute resolution
Main provisions	Law No. 8/2010 dismisses Government Emergency Ordinance No. 42/2009 (**"GEO No. 42/2009"**) amending the Civil Procedure Code. In the first place, GEO No. 42/2009 was passed to amend Art. 373^1 of the Civil Procedure Code (regarding the initial stage of the enforcement proceedings). The amendment was required as a result of Constitutional Court's Decision No. 458/2009 declaring the provisions of this article as amended by Art. I item 13 of Law No. 459/2006 unconstitutional. Basically, the Constitutional Court sanctioned the removal of the judicial review of the initiation of enforcement. The Parliament failed to make a determination on GEO No. 42/2009 within the 30-day term from its submission for debate and, as a result, the enactment came into force. Nevertheless, subsequent to GEO No. 42/2009, Law No. 202/2010 on certain measures for expediting dispute resolution was passed (**"Law No. 202/2010"**); this law substantially amended the Civil Procedure Code, including the provisions of Art. 373^1. Consequently, as the amendments brought to the Civil Procedure Code by GEO No. 42/2009 were, at their turn, amended by Law No. 202/2010, the Parliament of Romania dismissed GEO No. 42/2009.
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Real Estate

1 Measures on the discipline in constructions

Name of the enactment	Law No. 3/2011 of 1 March 2011 approving Government Emergency Ordinance No. 41/2010 on certain measures to consolidate discipline in constructions (**"Law No. 3/2011"**)
Publication	Official Gazette of Romania, Part I No. 158 of 4 March 2011
Entry into force	7 March 2011
Connections with other enactments	• Government Emergency Ordinance No. 41/2010 on certain measures to consolidate discipline in constructions (**"GEO No. 41/2010"**) • Law No. 50/1991 authorizing the performance of construction works (**"Law No. 50/1991"**)

Main provisions	Law No. 3/2011 amends GEO No. 41/2010 extending the categories of constructions built without a construction permit or in breach of the provisions thereof on public or private properties, completed or in progress, which are to be demolished by the owners further to receiving a notice from the Ministry of Regional Development and Tourism, or by the Ministry of Regional Development and Tourism itself, if such constructions are not demolished directly by the owners. According to Law No. 3/2011, not only buildings intended for tourism and buildings located within a 200-meter range from the coastline, but „*all buildings intended for tourism in areas with a potential for tourism, resorts, protected built areas, protection areas near historical monuments, natural reservations and others alike, and buildings intended for tourism and buildings located within a 200-meter range from the coastline, resorts and localities on the coast of the Black Sea, built without a construction permit or in breach of the provisions thereof, on public or private properties, completed or in progress*" are to be demolished according to law. For the implementation of such legal provisions, the representatives of the State Inspectorate in Constructions shall establish the unlawfulness of the construction works, *i.e.* the performance thereof without a permit or in breach of the provisions thereof, and, to this end, shall notify the General Directorate for Public Works acting within the Ministry of Regional Development and Tourism. The latter shall notify the owners of such works to demolish them within 48 hours from the time the notice is served or posted in a visible place on the building, and, should such term not be complied with, the buildings constructed in breach of the legal provisions shall be demolished within 24 hours by the Ministry of Regional Development and Tourism.
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2 Special contractual conditions provided by the agreements on equipment and constructions

Name of the enactment	Order No. 146/2011 of the Ministry of Transport and Infrastructure (**"Order No. 146/2011"**)
Publication	Official Gazette of Romania, Part I, No. 188 of 17 March 2011
Entry into force	17 March 2011
Connections with other enactments	Government Decision No. 1405/2010 approving the use of certain contractual conditions established by the International Federation of Consulting Engineers (**"General Conditions"**) for investment objectives of the national interest transport infrastructure, financed from public funds (**"GD No. 1405/2010"**)

Main provisions

Order No. 146/2011 approved the special contractual conditions provided by the agreements on equipment and constructions, including design and by the agreements on building construction and engineering works designed by the beneficiary, agreements concluded by the International Federation of Consulting Engineers (**"Special Conditions"**) for the investment objectives of the national interest transport infrastructure, financed from public funds.

Under GD No. 1405/2010, the undertakings subordinated to the Ministry of Transport and Infrastructure are compelled to use the General Conditions, as amended and supplemented by the Special Conditions, when:

- Concluded works agreements regard investment objectives of the national interest transport infrastructure, financed from public funds,
- The said objectives are financed from public funds, and
- The estimated value of the agreement exceeds EUR 4,845,000.

Generally, the Special Conditions establish the following:

- To guarantee the due execution of works, the contractor shall provide the beneficiary with a letter of bank guarantee for the amount equivalent to 10% of the agreed contractual value;
- If the contractor fails to observe the duration of work performance, the beneficiary shall be entitled to receive delay penalties of 0.1% of the agreed contractual value per day of delay, however the penalties shall be limited to 15% of the agreed contractual value;
- The compliance of work progress with the contractor's performance schedule is controlled based on a reference target system, for the purpose of monitoring and evaluating the work progress;
- The contractor is held liable for the supply of an Authorized Traffic Management Plan;
- If the beneficiary fails to pay upon the due date, the contractor shall be entitled to ask for financing expenses for the delay, which expenses shall be calculated on a monthly basis, for the unpaid amount, at the interest rate established by the National Bank of Romania for the main re-financing operations; however, the beneficiary shall have a grace period of 45 days for the outstanding amounts;
- The acceptance of works is conditional on the completion thereof, as

per contractual provisions and on the issue of an acceptance minutes upon the completion of works, as per the legal provisions, which minutes recommends the approval of the acceptance and the issue, by the Engineer, of an acceptance certificate upon the completion of works;

- The guarantee period of the works shall be at least 730 days;
- The final acceptance of works shall take place upon the expiry of works guarantee period and is conditional upon the issue of the final acceptance minutes, as per the legal provisions, which minutes recommends the approval of the final acceptance and the issue, by the Engineer, of an acceptance certificate upon the completion of works;
- The Beneficiary shall return the performance bond to the Contractor, within 21 days following the receipt of a copy of the final acceptance certificate;
- The disputes among the parties shall be settled by the Dispute Adjudication Board ("**DAB**") and, if the parties are not satisfied with the DAB decision, the dispute shall be referred to arbitration; the arbitral proceedings shall be carried out in Romania, before the Bucharest Court of International Commercial Arbitration.

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Schedule of Tax Duties

Name of the enactment	Government Emergency Ordinance No. 29/2011 on the granting payment schedule ("**GEO No. 29/2011**")
Publication	Romanian Official Gazette, Part I, No. 200 of 22 March 2011
Entry into force	22 March 2011
Connections with other enactments	Ordinance No. 92/2003 on the Fiscal Procedural Code, republished as amended and supplemented (the "**Fiscal Procedural Code**") which is the general law by reference to GEO No. 29/2011
Main provisions	GEO No. 29/2011 was issued at the recommendation of the International Monetary Fund, in consideration of the taxpayers' financial difficulties which deepened during the economical and financial crisis. It provides that the payment of all tax duties managed by the National Agency for Tax Management may be scheduled at the request of the taxpayer – natural

or legal entity (whether a public or private person and irrespective of its form of organization), for a period of no more than 5 years.

In order to be scheduled, the tax duty must be above RON 500 for natural persons and respectively RON 1,500 for legal entities. The fines which become income to the State budget or the duties representing a condition to obtain an administrative deed (licenses, permits, etc.) cannot be scheduled.

The scheduling period is limited to the term requested by the taxpayer and shall be determined by reference to the quantum of the tax obligations and the taxpayer's financial capacity.

The schedule is granted at the request of the taxpayer who meets the legal conditions and is settled within 60 days as of its registration. The content of the application and the necessary supporting documents are determined by order of the Minister of Public Finance. Generally, in order to benefit from the provisions of GEO No. 29/2011, a taxpayer must have submitted all tax statements, must prove that he has difficulties in the payment of tax duties and must be solvent/not under dissolution.

Upon receipt of the application for schedule, the tax authority shall issue *ex officio* a tax certificate valid for 90 days for the outstanding payment duties on the issuance date thereof, without charging any filing fee in this respect. After having analyzed the application, the tax authority shall issue either a decision to reject it for failure to meet the requirements, or a preliminary endorsement.

The taxpayer must establish securities within 30 days as of the date when the preliminary endorsement is served, except for the case when the tax duty to be scheduled does not exceed RON 5,000 for natural persons, respectively RON 20,000 for legal entities. The securities may consist of amounts made available by the taxpayer to the tax body, a letter of bank guarantee, a prejudgment seizure on the taxpayer's assets or, in case of third party assets, free of any liens, mortgage or pledge. The assets brought as security shall be assessed by an expert appraiser. The value of securities must cover at least the scheduled amounts and the interests owed during the schedule period. Depending on the type of established security, the taxpayer must also cover 10% to 40% of the scheduled amounts, by reference to the number of months for which the schedule was ordered. The securities may be replaced, replenished or resized, as the case may be.

GEO No. 29/2011 provides for certain conditions which must be cumulatively met

in view of maintaining the payment schedule valid.

The interest owed during the schedule period amount to 0.04% per day, except for the case when the taxpayer established the entire security under the form of a letter of bank guarantee or made the amounts available to the tax body, in which case the interest is 0.03%. The interest are owed, for each installment, as of the date of the scheduling decision until the due date provided in the scheduling timetable or until the installment payment date, whichever occurs last.

No late penalties are owed for the scheduled duties if the 90-day due date occurs after the submission of the application for schedule.

10% delay penalties are owed if the payment of the schedule installment (representing scheduled principal and/or accessory tax duties) is delayed or if the schedule is no longer valid due to failure to comply with the requirements.

GEO No. 29/2011 provides that, for the scheduled amounts and other tax duties expressly stipulated, no enforcement proceedings may be commenced, or such proceedings are suspended as of the date when the scheduling decision is served. The suspension of enforcement proceedings has effects only on the future amounts obtained by the taxpayer, while the amounts already existing in his account continue to remain unavailable and may be used only for the purpose of paying certain privileged receivables, *i.e.*: duties on which the maintaining of the schedule validity depends and wage rights. As regards the garnished third parties, the suspension of enforcement proceedings means that all present or future amounts are no longer unavailable.

The taxpayer may pay in advance, in full or in part, the amounts provided in the scheduling timetable. The advance payment of more than three installments entails the amendment of the scheduling timetable.

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