

# Legal Bulletin

May - June 2011

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May - June 2011

## Legal Bulletin

### Civil Law

Name of the enactment	Law No. 71/2011 implementing Law No. 287/2009 on the Civil Code (“ <b>Law No. 71/2011</b> ”)
Publication	Official Gazette of Romania, Part I, No. 409/10 June 2011
Entry into force	1 October 2011, except for the provisions on: <ul style="list-style-type: none"><li>- the dissolution, and reorganization, respectively, of commercial divisions within courts of law;</li><li>- the obligation to comply with the procedures of passing certain bills and subsequent legislative amendments.</li></ul>
Connections with other enactments	Law No. 287/2009 on the Civil Code (the “ <b>New Civil Code</b> ”)
Main provisions	<p>Law No. 71/2011 is aimed at harmonizing the existing civil legislation with the provisions of the New Civil Code, and at settling the conflict of law resulting from the implementation thereof.</p> <p>Law No. 71/2011 sets the date for the entry into force of the New Civil Code, which is <b>1 October 2011</b>.</p> <p>Law No. 71/2011 includes provisions on:</p> <ul style="list-style-type: none"><li>• <b>General Provisions on the Implementation in Time of the Law</b></li></ul> <p>Law No. 71/2011 reiterates the legal principles on the implementation in time of the civil law, and also lists the exceptions therefrom. Consequently, legal acts and deeds concluded, or performed or occurred, as the case may be, prior to the entry into force of the New Civil Code may not generate other legal effects, except as provided under the law in force upon their conclusion, or performance or occurrence, as the case may be.</p> <p>The provisions of the New Civil Code shall apply to all acts and deeds concluded, or performed or occurred, as the case may be, subsequent to its entry into force, as well as to all legal statuses arising subsequent to its entry into force. On the other hand, the provisions of the New Civil Code shall also apply to the future effects of the legal statuses arising prior to the entry into force thereof, derived from the status and capacity of the persons, marriage, filiation, adoption or legal</p>

obligation to support, ownership relations, including the general regime of goods, and neighborhood relations, should such legal statuses survive subsequent to the entry into force of the New Civil Code.

- **Transitory Provisions for Implementing the provisions of the New Civil Code**

For each subsection of the New Civil Code (on the civil law, about persons, about family, about goods, about obligations, etc.) 3 sorts of provisions are listed:

- provisions of a transitory nature and for the implementation of the provisions of such subsection (i.e. exceptions from the rules of the implementation in time of the civil law mentioned above, such as: time of commencing negotiations, time of sending the offer for contracting, time of making a payment, time of sending a formal notice, time when debts become due, time of finding out latent flaws, etc.);
- amendment and supplementation of certain provisions of the New Civil Code;
- amendment and supplementation of certain special laws.

Please find below a list of the most important laws amended by Law No. 71/2011:

- Law No. 31/1990 on Business Companies (*see Art.10 of Law No. 71/2011*);
- Law No. 26/1990 on the Trade Registry (*see Art.11 of Law No. 71/2011*);
- Law No. 8/1996 on copyrights and related rights (*see Art.21 of Law No. 71/2011*);
- Law No. 33/1994 on expropriation for public utility reasons (*see Art.84 of Law No. 71/2011*);
- Law No. 51/1995 on the organization and exercise of the legal profession (*see Art. 85 of Law No. 71/2011*);
- Law No. 86/2006 on the organization of the insolvency practitioners' activity (*see Art. 86 of Law No. 71/2011*);
- Law of Cadastre and Real Estate Registration No. 7/1996 (*see Art. 87 of Law No. 71/2011*);
- Law No.213/1998 on public property and legal regime thereof (*see*

- Art.89 of Law No. 71/2011);
- Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy (see Art. 100 of Law No. 71/2011);
  - Public Notary and Notarial Activity Law No. 36/1995 (see Arts. 54, 101 and 191 of Law No. 71/2011);
  - Law No. 136/1995 on insurance and reinsurance in Romania (see Art. 192 of Law No. 71/2011);
  - Law No. 190/1999 on the mortgage loan for real estate investments (see Art. 193 of Law No. 71/2011);
  - Government Ordinance No. 9/2000 on the level of the legal interest for pecuniary obligations (see Art. 197 of Law No. 71/2011);
  - Law No. 571/2006 on the Fiscal Code (see Art. 198 of Law No. 71/2011);
  - Law No. 304/2004 on judicial organization (see Art. 215 of Law No. 71/2011);
  - Civil Procedure Code (see Art. 219 of Law No. 71/2011).

- **Final Provisions**

The dissolution of the commercial divisions within the courts of law and commercial tribunal of Argeș, Cluj and Mureș Counties is an essential amendment. Civil and commercial cases pending judgment upon the entry into force of the Civil Code shall be settled by the same panels, in compliance with the principle of continuity. In addition, Law No. 71/2011 includes provisions regulating the obligation of passing bills and subsequent legislative amendments (*i.e.* amendment and supplementation of Law No. 119/1996 on the acts of civil status, amendment and supplementation of Law No. 571/2003 on the Fiscal Code, joint norms of the National Bank of Romania and National Securities Commission on the investments presumed secure).

Within 4 months from the publication of Law No. 71/2011 in the Official Gazette, the laws, including the New Civil Code, and the Government Emergency Ordinances and the Government Ordinances amended and/or supplemented hereby shall be republished in the Official Gazette of Romania, Part I.

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## Employment and Social Security Law

Name of the enactment	Order No. 1439/2011 for the approval of the Methodological Norms for the application of Law No. 52/2011 on the performance of certain seasonal activities by day-labourers (" <b>Order No. 1439/2011</b> ")
Publication	Official Gazette of Romania, Part I, No. 300 of 2 May 2011
Entry into force	2 May 2011
Connections with other enactments	Law No. 52/2011 on the performance of certain seasonal activities by day-labourers
Main provisions	<p>Order No. 1439/2011 mainly regulates the procedure for drawing up the day-labourers register. In this respect, the day-labourers register is purported to serve as:</p> <ul style="list-style-type: none"><li>- an official registration document for day-labourers;</li><li>- a data source for drafting a national plan on policies regarding employment and fighting against illegal employment;</li><li>- an administrative data source for the IT statistic system, <i>i.e.</i> current statistics, monitoring of indexes on the evolution of occupancy percentage and of the employment market, etc.</li></ul> <p>The beneficiary shall monthly send the day-labourers register to the competent territorial employment authority.</p> <p>A tax rate of 16% shall be applied to the gross income obtained by day-labourers, <i>i.e.</i> their daily remuneration. The tax due shall be calculated and withheld by the beneficiary upon each payment of the gross daily remuneration.</p>

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## 2 The Social Dialogue Law

Name of the enactment	Law No. 62/2011 on the social dialogue (" <b>Law No. 62/2011</b> ")
Publication	Official Gazette of Romania, Part I, No. 322 of 10 May 2011
Entry into force	13 May 2011
Main provisions	<p>The most important changes brought by Law No. 62/2011 regarding the matter of collective bargaining agreements, collective negotiations and trade unions are as follows:</p> <ul style="list-style-type: none"><li>• <b>Collective bargaining agreements:</b><ul style="list-style-type: none"><li>- the collective bargaining agreements can be concluded at unit,</li></ul></li></ul>

group of units and industry sector levels. The industry sectors shall be defined by Government Decision, after consultations with the social partners;

- as a general rule, collective bargaining agreements can be concluded for no less than 1 year and no more than 2 years.
- **Collective bargaining:**
  - the employer must initiate the collective negotiations with at least 45 days before the expiry of the existing collective bargaining agreements. Should the employer fail to comply with such obligation, the collective negotiations shall start at the written request of the unions, no later than 10 days as of such request;
  - the collective negotiations cannot last for more than 60 days, unless the parties otherwise agree;
  - for the purpose of the collective negotiations, the employer must provide the unions with information on (i) the company's current economic and financial status and (ii) the workforce status.
- **Trade unions:**
  - in order to take part in the collective negotiations, trade unions must comply with the representativeness criteria set out by Law No. 62/2011. For such purpose, a trade union shall be regarded as representative at unit level, provided that at least 50%+1 of the total number of employees are members of the respective union;
  - should no union be representative at unit level as per the above, the following scenarios shall be applied:
    - if a trade union is acting at unit level (without being representative as per the above mentioned criteria) the negotiations shall be conducted with (i) the federation to which the trade union is affiliated, provided that such federation is representative at the industry sector level and (ii) the elected representatives of the employees;
    - if trade unions are acting at unit level, without being representative and without being affiliated to federations, or if no trade unions are acting at unit level, the negotiations shall be conducted only with the elected

representatives of the employees.

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### **3 The economic activities of freelancers, individual undertakings and family undertakings**

Name of the enactment

Government Emergency Ordinance No. 46/2011 amending and supplementing Article 17 of Government Emergency Ordinance No. 44/2008 concerning the economic activities of freelancers, individual undertakings and family undertakings ("**GEO No. 46/2011**")

Publication

Official Gazette of Romania, Part I, No. 350 of 19 May 2011

Entry into force

19 May 2011

Connections with other enactments

Government Emergency Ordinance No. 44/2008 concerning the economic activities of freelancers, individual undertakings and family undertakings ("**GEO No. 44/2008**")

Main provisions

The new enactment brings one significant change to the freelancers' operations, as laid down by GEO No. 44/2008. Under the new provisions, freelancers may employ third parties based on an individual employment agreement. This allows freelancers to act through other individuals, who shall be their employees. As regards the relationships between freelancers and third parties, according to art. 16 of GEO No. 44/2008, the provisions that freelancers cannot be employees of third parties with whom they collaborate, even when such collaboration is exclusive, are maintained. Therefore, the relationship between a freelancer and a third party shall not qualify as an employment relationship.

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### **4 The general record of employees**

Name of enactment

Government Decision No. 500/2011 on the general record of employees ("**GD No. 500/2011**")

Publication

Official Gazette of Romania, Part I, No. 372 of 27 May 2011

Entry into force

1 August 2011

Connections with other enactments

Government Decision No. 161/2006 regarding the drafting and filling in of the general record of employees ("**GD No. 161/2006**")

Law No. 53/2003 on the Labor Code

Starting with 1 August 2011, GD No. 500/2011 shall replace and repeal GD No.

Repealed enactments

161/2006.

Main provisions

GD No. 500/2011 brings a set of major amendments to the regulation of the general record of employees (the “**Record**”) and to the personnel file.

- **The main amendments to the Register concern the following issues:**
  - the obligation to set up and submit the Record in case of diplomatic missions and consular offices of other States in Romania, cultural institutes and commercial and economic representative offices of other States in Romania, and in the case of the local personnel with Romanian citizenship or permanent residence in Romania with the Territorial Labor Inspectorate (“**TLI**”);
  - the Record shall be filled in and submitted by one or several persons appointed by written decision of the employer; should the Record be filled in by other persons, this shall be deemed misdemeanor and shall be sanctioned by fine ranging from RON 3,500 to RON 5,000;
  - the service of filling in and submitting the Record may be outsourced to providers registered with TLI; in this case, the employer shall have to inform TLI in writing, under pain of a misdemeanor fine ranging from RON 2,000 to RON 5,000;
  - service’s outsourcing shall not relieve the employer from its obligations provided under GD No.500/2011;
  - providers may not subcontract the service assigned by the employer;
  - the Record shall be filled in with the following fields, newly inserted as compared to GD No. 161/2006:
    - employee’s citizenship and country of origin;
    - period of secondment and name of employer where secondment is performed; such data shall be filled in with the Record prior to the commencement of the secondment;
    - normal period and allocation of working hours;
    - salary, increments and amount thereof; such data shall also be filled in in the case of individual employment agreements already registered, within 90 days from the entry into force of GD No. 500/2011;
    - period and reasons for suspending EA, except for



suspensions based on medical certificates; such data shall be filled in with the Record within maximum 20 business days from suspension;

- amendments brought to employees' identification details, secondment, position, type of the employment agreement, normal term and allocation of business hours, salary and increases shall be registered with the Record on the business day before the expiry of the 20-day term from the amendment's occurrence, at the latest. Should the amendments occur as a result of a court judgment or enactment, the registration with the Record shall be performed on the date when the employer is presumed to have taken note of the contents thereof, according to law;
- new misdemeanors are defined, new ceilings for misdemeanors fines are set and the possibility to pay half of the minimum misdemeanor fine provided for a part (and not all) of the misdemeanors within maximum 48 hours;
- failure to submit the Record filled in according to GD No. 500/2011 on the business day before the commencement of the activity by the employee, at the latest, shall be deemed misdemeanor and shall be punished by a fine of RON 10,000 for each person working for the employer without submitting the Record filled in with all the details of the employment agreements with TLI, without the possibility to pay half of the minimum misdemeanor fine within maximum 48 hours. The aggregate fine shall not exceed the amount of RON 50,000.
- **The main amendments brought to the system of the personnel files concern the following issues:**
  - the employer shall have to keep the personnel files of the employees at the headquarters. In addition to the documents provided under GD No. 161/2006, the personnel file shall also include education papers or qualification certificates of the employees.
  - a term of maximum 15 days from the written request of an employee or former employee is set, within which the employer shall have to provide him/her with copies of the documents from his file and of the Record's pages regarding the employee and/or document

attesting to the activity performed by him/her, duration of activity, salary, seniority in terms of occupation and specialty. Employer's refusal to provide the copies of the above documents shall be deemed misdemeanor and shall be sanctioned by fine ranging from RON 300 to RON 1,000.

- inasmuch as, due to objective reasons, the employer may not issue such documents, the employee or former employee may request TLI to issue a certificate attesting to the data in the Record, as prepared and submitted by the employer. TLI shall issue the document within 15 days from request, at the latest.
- **New explicit provisions are inserted with respect to the obligation to comply with Law No. 677/2001 on the protection of persons in terms of personal data processing and free circulation thereof, as amended and supplemented**
- **Both the public authorities and institutions may access such data in the Record, and TLI is given the possibility to access the databases held by public authorities and institutions, with a view to fighting against undeclared employment materializing in non-registration with the Record**

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Name of enactment	<p><b>5 The free movement of the citizens of the European Union and European Economic Area Member States on the Romanian territory</b></p> <p>Law No. 80/2011 amending and supplementing Government Emergency Ordinance No. 102/2005 on the free movement of the citizens of European Union and European Economic Area Member States on the Romanian territory ("<b>Law No. 80/2011</b>")</p>
Publication	Official Gazette of Romania, Part I, No. 443 of 24 June 2011
Entry into force	27 June 2011
Connections with other enactments	Government Emergency Ordinance No. 102/2005 on the free movement of the citizens of the European Union and European Economic Area Member States on the Romanian territory (" <b>GEO No. 102/2005</b> ")
Main provisions	Law No. 80/2011 brought major amendments to the legal regime applicable to the free movement of the citizens European Union and European Economic Area Member States on the Romanian territory. The main aspects regulated under Law

No. 80/2011 are the following:

- **Extension of the applicability of the provisions of GEO No. 102/2005**

Law No. 80/2011 included the citizens of the Swiss Confederation and their family members as citizens enjoying the right to freely move on the territory of Romania, along with the citizens of the European Union (“EU”) and European Economic Area (“EEA”) Member States.

- **Regulation of the procedure of issuing visas for foreign citizens, family members of EU/EEA/Swiss Confederation citizens**

According to the provisions of Law No. 80/2011, family members of EU/EEA/Swiss Confederation citizens that do not have the citizenship of one of such States may enter the Romanian territory based on a valid passport and entry visa, except for the cases when the visa is not required.

The entry visa shall be granted upon request by the diplomatic missions and consular offices of Romania, with the approval of the National Visa Center attached to the Ministry of Foreign Affairs, within 48 hours, without payment of consular duties.

- **The citizens of EU/EEA are no longer required to state their presence within 15 days from entering the territory of Romania**

Law No. 80/2011 repealed the provision under GEO No. 102/2005 providing the obligation of the EU/EEA citizens to state their presence in Romania within 15 days from entering the country.

- **Extension of the right of the citizens of the EU/EEA/Swiss Confederation in search of a job to stay on the territory of Romania**

According to the provisions of Law No. 80/2011, the citizens of the EU/EEA/Swiss Confederation that are on the territory of Romania in search of a job shall be acknowledged a residence right for a period of up to 6 months from the date of entry, without compliance with any other additional requirement. Prior to Law No. 80/2011, the residence right was limited to 3 months.

- **Validity terms for the registration certificates and permanent resident cards**

Law No. 80/2011 inserted a validity term for the registration certificate issued for the citizens of the EU/EEA/Swiss Confederation of 5 years. Prior to Law No. 80/2011

coming into force, the registration certificates issued for the citizens of the EE/EEA had an unlimited validity period.

As to the validity term of a permanent resident card, this shall be of 10 years, and of 5 years, respectively, in case of the permanent resident cards issued for persons aged up to 14 years.

- **Special cases involving the granting of a permanent residence right**

Law No. 80/2011 provides the possibility of obtaining a right of permanent residence on the territory of Romania without complying with the requirements provided under the law for the following categories of persons:

- EU citizens or their family members of a Romanian origin or born in Romania, and those persons whose residence would be in the interest of the State of Romania;
- Minors whose parents are holders of a permanent residence right;
- EU citizens proving to have made investments of at least EUR 1,000,000 or to have created over 100 full-time jobs.

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## **6 Inapplicability of the obligation to present the list of vacant positions in the company when the employee has been dismissed for grounds not related to his/her person**

Name of enactment

Decision of the High Court of Cassation and Justice No. 6/2011 on the applicability of the provisions of Article 74 (1) d) of the Labor Code in the situation when dismissal is ordered for reasons which may not be attributed to the employee, by virtue of the provisions of Article 65 of the Labor Code ("**Decision No. 6/2011**").

Publication

Official Gazette of Romania, Part I, No. 444/24 June 2011

Connections with other enactments

Law No. 53/2003 – Labor Code (the "**Labor Code**"), as amended and supplemented

Main provisions

The final appeal in the interest of law reveals that the legal practice holds no unitary view on the applicability of the provisions of Article 74 (1) d) of the Labor Code (namely that the dismissal decision must mandatorily contain the list of all the available workplaces in the unit and the term until which the employees may opt for an available workplace) in the situation when the dismissal is ordered for reasons which may not be attributed to the employee, by virtue of the provisions of Article 65 of the Labor Code.

Consequently, the practice has seen two interpretations. According to the first interpretation, some courts of law upheld that these provisions apply, by way of reference to the provisions of Art. 64 of the Labor Code, only to dismissals grounded on the provisions of Art. 61 letters c) and d) and Art. 56 letter f) (dismissal for medical reasons, dismissal for professional unsuitability and *de jure* termination of the individual employment agreement), and not to situations when the dismissal was ordered for grounds not related to the employee.

On the other hand, in the second interpretation, other courts considered that such provisions also apply to the latter situation, Article 74 (1) d) of the Labor Code establishing a fourth case requiring the provision to the employee of a list of vacant positions in the company.

The High Court of Cassation and Justice accepted the first interpretation of the practice and considered that the provisions of Article 64 of the Labor Code, referred to by Article 74 (1) d) of the Labor Code concern only the situations when dismissal is grounded on the reasons provided under Article 61 c) and d) and Article 56 f) of the Labor Code.

The High Court of Cassation and Justice establishes that the provisions of Article 74 (1) d) by way of reference to Article 64 (1) of the Labor Code must be strictly interpreted, being provisions of exceptional nature, specifying that any extension of the scope of the situations provided is unlawful.

For such reasons, the High Court of Cassation and Justice upheld the final appeal in the interest of law, establishing that the provisions of Article 74 (1) d) of the Labor Code do not apply to the situation when dismissal is ordered by virtue of Article 65 of the Labor Code for reasons not related to the employee.

Mention must be made that this decision concerns the version of the Labor Code prior to the amendments brought by Law No. 40/2011. Nevertheless the provisions in question have been taken over in a similar manner in Article 76 (1) d) in the Labor Code as republished further to the amendments brought by Law No. 40/2011.

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## **7 The standard individual employment agreement**

Name of enactment

Order No. 1616/2 June 2011 of the Minister of Labor, Family and Social Protection on the amendment and supplementation of the standard individual employment agreement, as provided in the appendix to Order No. 64/2003 of the Minister of

	Labor and Social Solidarity (“ <b>Order No. 1616/2011</b> ”)
Publication	Official Gazette of Romania, Part I, No. 415 of 14 June 2011
Entry into force	14 June 2011
Connections with other enactments	Order No. 64/2003 of the Minister of Labor and Social Solidarity; Law No. 53/2003 on the Labor Code
Main provisions	<p>Order No. 1616/2011 brings mainly the following amendments to the standard individual employment agreement, as provided in the appendix to Order No. 64/2003:</p> <ul style="list-style-type: none"><li>- the article on occupation shall also stipulate the department, workshop, office, division or sub-division and shall specify whether the employee works at the company’s registered office, at a designated work point or at another organized workplace of the employer;</li><li>- a new article shall be introduced, called “Criteria for the assessment of the employee’s work”;</li><li>- the minimum limit of two hours/day for part-time jobs is eliminated;</li><li>- two new categories are added to the article on wages: additional considerations in cash, respectively the types of additional considerations in kind;</li><li>- it introduces the employer’s right to determine the employee’s individual performance targets, as well as the employer’s obligation to hand over to the employee a counterpart of the individual employment agreement before the commencement of work; the document certifying the applicant’s capacity of employee, issued by the employer upon request, shall stipulate the employee’s type of work, term of employment, wage, years of service, years of experience and years of specialization;</li><li>- the signature paragraph shall also include the date when the employee signed the individual employment agreement.</li></ul>
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## Environment Law

### 1 The promotion of clean and energy-efficient road transport vehicles

Name of enactment	Government Emergency Ordinance No. 40/2011 on the promotion of clean and
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	energy-efficient road transport vehicles (“GEO No. 40/2011”)
Publication	Official Gazette of Romania, Part I, No. 307 of 4 May 2011
Entry into force	4 May 2011
Connections with other enactments	Directive 2009/33/CE of the European Parliament and of the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles (“Directive 2009/33/CE”)  GEO No. 40/2011 transposes the provisions of Directive 2009/33/CE.
Main provisions	<ul style="list-style-type: none"><li>• <b>Obligations of the public authorities as to the purchase of road transport vehicles</b></li></ul> <p>GEO No. 40/2011 provides for the general obligation of the contracting authorities and the operators having public service obligations under a public service agreement, to consider, upon purchasing transport vehicles, the energy and environmental impact throughout the life of such vehicles, including the energy consumption and the emissions of CO<sub>2</sub>, NO<sub>x</sub>, NMHC and particles. This rule shall be applicable except for the vehicles designed and manufactured mainly for construction sites, quarries, harbours and airports, the vehicles designed and manufactured for the armed forces, civil protection services, fire fighting services as well as law and order forces and the self-propelled machinery.</p> <p>The issues to be considered when ascertaining the energetic and environmental operational risk must include at least the following:</p> <ul style="list-style-type: none"><li>- energy consumption;</li><li>- CO<sub>2</sub> emissions;</li><li>- NO<sub>x</sub>, NMHC and particle emissions.</li></ul> <ul style="list-style-type: none"><li>• <b>Methods to boost the clean car market</b></li></ul> <p>According to GEO No. 40/2011, individuals, administrative-territorial units and public institutions delivering, in 2011, used cars for decommissioning under the “Program for boosting the renewal of the national car fleet” shall get 4 vouchers, as follows:</p> <ul style="list-style-type: none"><li>- vouchers for the purchase of a hybrid car, in exchange for delivering a used car for decommissioning purposes;</li><li>- 4 vouchers for the purchase of an electric car, in exchange for delivering a used car for decommissioning purposes.</li></ul>

Furthermore, individuals, administrative-territorial units and public institutions that do not take part in the "Program for boosting the renewal of the national car fleet", but purchase hybrid or electric cars shall benefit from:

- a rebate of up to 10% from the sale price of the purchased hybrid car, but not above the RON equivalent of EUR 1,800, according to the exchange rate communicated by the National Bank of Romania on the payment date;
- a rebate of up to 20% from the sale price of the purchased electric car, but not above the RON equivalent of EUR 3,700, according to the exchange rate communicated by the National Bank on the payment date.

The deductions shall be borne from the Environmental Fund.

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## **2 Preventing and sanctioning acts causing environment degradation**

Name of enactment

Law No. 101/2011 on preventing and sanctioning acts causing environment degradation ("**Law No. 101/2011**")

Publication

Official Gazette of Romania, Part I, No. 449 of 28 June 2011

Entry into force

1 July 2011

Main provisions

Law No. 101/2011 incriminates the acts that are significantly affecting environmental factors, or which may cause human death or injury by their effects thereupon.

For example, the following are considered to be offences:

- collecting, using, disposing or carrying waste, in breach of the related applicable norms, likely to cause human death or serious injury, or significant damage to the environment;
- operating an installation serving for the performance of an activity with a significant impact on the environment, if such installation is operated in breach of the applicable legal provisions, and is likely to cause human death or serious injury, or a significant environmental impact, outside such installation;
- illegal trade of protected species of flora and fauna.

Other offences consist of the failure to observe the export procedure for waste or



radioactive materials procedures. Most incriminated acts are punished both when perpetrated with intent, as well as when perpetrated by negligence.

In addition, Law No. 101/2011 extends the scope of certain incriminations concerning environment protection provided in the Criminal Code and in certain special enactments. Prior to the entry into force of the law, such incriminations referred to acts perpetrated with intent, but Law No. 101/2011 extends the scope of criminal liability, punishing such acts in case they are perpetrated by negligence.

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Name of enactment

Law No. 104/2011 on the quality of ambient air ("**Law No. 104/2011**")

Publication

Official Gazette of Romania, Part I, No. 449 of 28 June 2011

Entry into force

1 July 2011

Main provisions

Law No. 104/2011 establishes the legislative framework regulating the measures to be taken in order to improve air quality. Mostly, the enactment sets a series of obligations incumbent upon the public administration bodies, and the various institutions have different attributions within the process of evaluating and ensuring air quality.

Furthermore, Law No. 104/2011 establishes the foundation of the National Institute for Air Quality Assessment and Integrated Management, hereinafter referred to as SNEGICA, ensuring the organizational, institutional and legal framework for the collaboration between public authorities and institutions competent in this field, for the purpose of assessing and managing the quality of ambient air, in an integrated manner throughout Romania, and of informing the population and the European and international bodies on the quality of ambient air.

One of the basic principles of the enactment is to grant public access to information on air quality and to the measures taken by the authorities to ensure same.

Moreover, the law grants to the public administration authorities (environmental protection agencies) the right to impose to the operators of plants having an impact on the environment a set of measures that are necessary to ensure air quality, and such measures may even include suspension of activity. Furthermore, environmental authorities may impose measures related to road

traffic, construction works, vessels at berth, use of industrial plants or products, and residential heating.

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## Establishment and Payment of Indemnifications for Abusively Seized Immovable Assets

Name of enactment

Government Decision No. 462/2011 amending item 18<sup>2</sup>.5 of the Methodological Norms for the Application of Title VII, "*Regime of establishment and payment of indemnifications for the abusively seized immovable assets*", of Law No. 247/2005 on the reform of property and justice and related measures, approved by Government Decision No. 1095/2005 ("**GD No. 462/2011**")

Publication

Official Gazette of Romania, Part I, No. 330 of 12 May 2011

Entry into force

12 May 2011

Connections with other enactments

Law No. 247/2005 on the reform of property and justice and related measures  
Government Decision No. 1095/2005 approving the Methodological Norms for the Application of Title VII, "*Regime of establishment and payment of indemnifications for the abusively seized immovable assets*", of Law No. 247/2005 on the reform of property and justice and related measures ("**Methodological Norms**")

Main provisions

Under the Methodological Norms, if the deed of indemnification for abusively seized immovable assets is worth up to RON 500,000, the holder is entitled to request either the conversion thereof into shares in *Fondul Proprietatea* or the granting of indemnifications in cash, or partially in shares and partially in cash.

According to Article 18<sup>2</sup>.5 of the Methodological Norms, the Department for Granting Indemnifications in Cash of the National Authority for Property Restitution (the "**Department**") shall issue the payment deeds and respectively the conversion deeds in the order of registration of the option applications filed by the persons entitled to receive indemnifications, provided that such applications are accompanied by all required documents, as per the Methodological Norms.

However, in exceptional circumstances (such as medical cases, social cases, etc., proved by documents), the Department may give priority to the issuance of certain payment and/or conversion deeds.

GD No. 462/2011 adds to the exceptional circumstances the case of market distortion as regards the trading with shares in *Fondul Proprietatea*, caused by a decrease in the market price of said shares which may jeopardize the indemnification process.

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## Financial Services

### 1 Non-banking financial institutions

Name of enactment

Government Emergency Ordinance No. 42/2011 amending and supplementing Government Emergency Ordinance No. 113/2009 on payment services and Law No. 93/2009 on non-banking financial institutions (“**GEO No. 42/2011**”)

Publication

Official Gazette of Romania, Part I, No. 303 of 3 May 2011

Entry into force

3 May 2011

Connections with other enactments

Government Emergency Ordinance No. 113/2009 on payment services (“**PSO**”) and Law No. 93/2009 on non-banking financial institutions (“**NBFI Law**”).

Main provisions

GEO No. 42/2011 amends the PSO as follows:

- introducing the payment institutions’ obligation to carry out crediting activities solely in relation to rendered payment services, according to the rules of prudent and sound practices, in compliance with GEO No. 42/2011 and the subsequent regulations issued by the National Bank of Romania (“**NBR**”). GEO No. 42/2011 allows the payment institutions to provide also other crediting activities, but only in accordance with the NBFI Law;
- clarifying the provisions regarding the waiver by a payment institution to the relevant NBR license, waiver which can be made solely under resolution passed by the shareholders of said institution and if no insolvency proceedings have been initiated against it;
- clarifying the wording of Article 30 on the calculation of the level of equities held by the payment institution;
- establishing that payment institutions performing crediting activities in connection to payment services must establish credit risk provisions in relation with said credits - as per the subsequent NBR regulations – which will be deducted upon calculation of the profit tax;

- introducing the mandatory audit of the annual financial statements and respectively the consolidated annual financial statements of the payment institutions performing crediting activities in connection to payment services and those whose activity is confined to payment services;
- establishing that payment institutions performing crediting activities in connection to payment services qualify as declaring entities registered with the NBR Central Credit Register;
- introducing the obligation to obtain the NBR approval with regard to the purchase of qualified interest in a payment institution, under the subsequent NBR regulations;
- establishing the enforceable character of credit agreements related to payment services and security interests in personal or real property by which such credits are guaranteed.

GEO No. 42/2011 amends the NBFILaw as follows:

- financial institutions from other Member States - which used to fall under the scope of Section 2, Chapter IV of Title I of the first part of Government Emergency Ordinance No. 99/2006 on credit institutions and the adequacy of capital, as subsequently amended- are no longer exempted from the NBFILaw;
- the payment institutions performing crediting activities in connection to payment services shall also fall under the scope of the NBFILaw;
- clarifying the definition of non-banking financial institutions ("NBFILaw"), which are "entities carrying out professional crediting activities under the requirements of the existing law";
- establishing the NBFILaws' right to provide services of issuance, management and processing of credit cards in connection to their crediting activities; such card operations shall not be regarded as payment services;
- stating that the NBFILaws registered with the general register may provide payment services and crediting activities related thereto under PSO and that such crediting operations shall not fall under the scope of the NBFILaw.

GEO No. 42/2011 also provides that, within 30 days as of publication, NBR shall issue implementation rules thereto.

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## 2 The activity of issuing electronic money

Name of enactment

Law No. 127/2011 on the activity of issuing electronic money (the “**Law No. 127/2011**”).

Publication

Official Gazette of Romania, Part I, No. 437 of 22 June 2011

Entry into force

25 June 2011

Connections with other enactments

Government Emergency Ordinance No. 113/2009 on payment services (“**GEO No. 113/2009**”)

Main provisions

The main goals of Law No. 127/2011 are:

- to regulate the conditions of accessing the activity of issuing electronic money and performing such activity;
- to regulate the conditions of performing the activity of payment service supply by the institutions issuing electronic money;
- to establish a prudential supervision on the institutions issuing electronic money; and
- to regulate the regime on the redemption of electronic money.

According to Law No. 127/2011, the electronic money shall mean a monetary amount stored on electronic means, including magnetic means, and representing receivables against the issuer, issued upon receipt of the funds for the purpose of making payment operations and which are accepted by a person, other than the issuer of electronic money.

The activity of issuing electronic money may be performed by the following categories of issuers: (i) credit institutions, (ii) legal entities authorized in accordance with Law No. 127/2011 to issue electronic money, (iii) suppliers of postal services issuing electronic money, (iv) European Central Bank and national central banks when they do not act as monetary authorities or other capacity which entails the exercise of public authority, (v) Member States and their regional or local authorities, when acting in their capacity as public authorities.

Any entity intending to issue electronic money on the territory of Romania shall have to be authorized by the National Bank of Romania (“**NBR**”). The institutions

issuing electronic money shall have to have an initial capital at least equal to the equivalent in RON of EUR 350,000. NBR shall assess and let the applicant know its decision on granting or dismissing the application for authorization within 3 months from the receipt of the application meeting the conditions provided by the Law No. 127/2011. Within maximum 10 business days, NBR shall confirm whether the conditions provided by Law No. 127/2011 are met or shall let the applicant know what are the documents and information he needs to supplement the same.

The permit issued by NBR shall allow the Romanian legal entity institution issuing electronic money to issue the electronic money and supply the payment services provided by the permit in any other Member State.

NBR may dismiss the applications for authorization in certain cases when the applicant fails to comply with the conditions expressly provided by Law No. 127/2011. In addition, NBR may withdraw the permit granted to an institution issuing electronic money should the issuer fail to commence the issuance and payment service supply activity within 12 months from the granting of the permit or should the permit be obtained based on false information, as sanction, as well as in other cases provided by the legislation in force.

The institution issuing electronic money shall *de jure* terminate its activity in the following cases: (i) a merger or spin-off of the institution issuing electronic money occurred as a result of which it ceases to exist, and/or (ii) a decision initiating the bankruptcy proceedings against the issuing institution is passed.

NBR provides requirements on the own funds of an institution issuing electronic money related to the electronic money activity, the elements considered upon calculation as well as other methods of calculation.

The institutions issuing electronic money shall be prohibited to fully or partially outsource the issuance of electronic money; nevertheless, they may outsource operational functions related to the electronic issuance activity, subject to informing NBR and to complying with the provisions of the Law.

Law No. 127/2011 also provides a notification procedure for the performance of the activity in other Member States and in third-party States by the institutions issuing electronic money as well as the conditions for the performance of the activity on the territory of Romania by institutions issuing electronic money from other Member States.

NBR shall organize and manage the registry of institutions issuing electronic

money, which shall register the Romanian legal entity institutions issuing electronic money, their branches in other Member States and in third-party States as well as the Romanian legal entity agents of the institutions issuing electronic money.

NBR shall secure the prudential supervision of the Romanian legal entity institutions issuing authorized electronic money, including for the activity of issuance of electronic money and supply of payment services performed via their branches and agencies.

NBR may enforce sanctions should it find that the institution issuing electronic money failed to comply with Law No. 127/2011 and regulations of NBR.

The acts passed by NBR may be challenged within 15 days from service before NBR's Board of Directors, which shall make a decision within 30 days from becoming notified, and the decision of NBR's Board of Directors may be challenged before the High Court of Cassation and Justice within 15 days from service.

The issuers of electronic money shall have to: (i) issue electronic money at a value equal to the funds received upon receipt of the funds, except for the situation when the payment of the equivalent value for the electronic money issued is made via a payment instrument, in which case they may issue electronic money prior to the receipt of the funds, (ii) notify the holders of electronic money on the value of the issued money and on the purchase price thereof.

The contract between the issuer of electronic money and the holder of electronic money shall have to provide the electronic money redemption conditions, including information on the charge of any redemption fees, value or method of computing the same.

To secure compliance with the provisions of Law No. 127/2011 by the issuers of electronic money, consumers may notify the National Authority for Consumer Protection, and the legal entity users may notify the Financial Guard in connection with cases of breach of the Law by the issuers of electronic money.

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## Fiscal Law

Name of enactment

Law No. 126/2011 approving Government Emergency Ordinance No. 88/2010 amending and supplementing Government Ordinance No. 92/2003 on the Fiscal

	Procedure Code (“ <b>Law No. 126/2011</b> ”)
Publication	Official Gazette of Romania, Part I, No. 433 of 21 June 2011
Entry into force	24 June 2011
Connections with other enactments	Government Ordinance No. 92/2003 on the Fiscal Procedure Code, republished, as subsequently amended (“ <b>Fiscal Procedure Code</b> ”)
Main provisions	<p>Although issued to approve Government Emergency Ordinance No. 88/2010 (“<b>GEO No. 88/2010</b>”) which amended the Fiscal Procedure Code, Law No. 126/2011 addresses matters which exceed the scope of the issues addressed by GEO No. 88/2010, inserting amendments in multiple fields regarding taxpayers.</p> <p>One of the most important amendments brought by Law No. 126/2011 is a provision referring to the payment of the tax on salaries for the taxpayers’ secondary headquarters.</p> <p>Thus, in the case of taxpayers with secondary headquarters, the taxpayer shall pay the fiscal liabilities, except for the tax on salary income which shall be paid by the secondary headquarters which has to become fiscally registered as payer of salaries and income assimilated therewith. Consequently, the legislative solution initially maintained by the lawmaker (prior to Government Emergency Ordinance No. 117/2010) is reinstated, and the tax on salary income is to be borne by the secondary headquarters which has to become fiscally registered. Nevertheless, the taxpayer with secondary headquarters shall have to state the tax due on salary income, on behalf of the secondary headquarters.</p> <p>As to the competence over managing the tax on salary income due by secondary headquarters, this shall be incumbent upon the fiscal body authorized to manage the liabilities of the taxpayer which created them.</p> <p>Law No. 126/2010 also includes certain new provisions on the regime of fiscal administrative acts. Consequently, the law provides that the irrevocable total or partial cancellation or termination of the fiscal administrative acts creating primary fiscal liabilities entails the cancellation, termination or amendment of both the fiscal administrative acts creating secondary fiscal liabilities related to the primary fiscal liabilities cancelled or terminated, and of subsequent fiscal administrative acts issued on the basis of the cancelled or terminated fiscal administrative acts, even if the fiscal administrative acts creating secondary fiscal liabilities or the subsequent fiscal administrative acts remained final in the system of means of appeal.</p>



In this case, the issuing fiscal body shall issue, *ex officio* or upon request of the taxpayer, a new administrative document terminating or amending subsequent fiscal administrative documents or fiscal administrative documents creating secondary fiscal liabilities. In addition, the fiscal administrative documents erroneously creating secondary fiscal liabilities shall be cancelled or terminated, in full or in part, even if means of appeal were exercised against them.

According to the new regulations, the date for submission of statements via electronic means on the e-Romania portal shall be deemed the date of their validation, taking into account the electronic message confirming the statement's validation sent by the system validating and transacting information.

As to the taxpayers' requests for correction of errors in the payment documents, their term of submission was extended from one to five years. This term shall start running on the 1<sup>st</sup> of January in the year following the year when payment was made.

One final issue worth mentioning concerns the amendments brought to the order of extinguishing fiscal liabilities. Currently, the law distinguishes between payment by enforcement and voluntary payment/payment by offset. Consequently, should they be recovered by enforcement, the amounts shall be extinguished in order of precedence, first the primary and then the secondary liabilities. On the other hand, inasmuch as the taxpayer undergoing enforcement voluntarily pays the liability or the offset occurs, the liability shall be extinguished in order of precedence, without taking into account the primary or secondary nature thereof.

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## Energy

Name of enactment

Government Emergency Ordinance No. 53/2011 implementing certain measures in the field of natural gas ("GEO No. 53/2011")

Publication

Official Gazette of Romania, Part I, No. 426 of 17 June 2011

Entry into force

17 June 2011

Connections with other enactments

Gas Law No. 351/2004 (the "Gas Law")

Main provisions

GEO No. 53/2011 was passed in order to implement certain measures to protect residential consumers and thermal power producers, exclusively with respect to the quantity of natural gas used when producing thermal power for population,

in connection with the natural gas price in the cold season 2011-2012.

To this effect, GEO No. 53/2011 provides that the supply of natural gas to residential consumers and producers of thermal power, exclusively with respect to the quantity of natural gas used when producing thermal power in cogeneration power plants and in thermal power plants for the population, shall be performed by following a mixed system of imported and domestic delivered gas. The objective is that the share of imported gas is limited, thus allowing a constant price for such consumers.

The predominant supply of natural gas from the domestic production is set to a 9-month period, starting from 1 July 2011. Subsequent to the expiry of such term, the Romanian Energy Regulatory Authority shall establish a mixed system of imported and domestic natural gas to be supplied, by approving the final regulated prices.

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## Public Procurement and Concessions

Name of enactment

Government Emergency Ordinance No. 52/2011 amending Government Emergency Ordinance No. 30/2006 on the duty to check procedural issues of the process of awarding public procurement contracts, public work concession contracts and service concession contracts ("**GEO No. 52/2011**")

Publication

Official Gazette of Romania, Part I, No. 411 of 10 June 2011

Entry into force

10 June 2011, except for Article I item 8 which shall come into force within 10 from publication in the Official Gazette of Romania

Connections with other enactments

Government Emergency Ordinance No. 30/2006 on the duty to check procedural issues of the process of awarding public procurement contracts, public work concession contracts and service concession contracts ("**GEO No. 30/2006**")

Government Emergency Ordinance No. 34/2006 on the award of public procurement contracts, public work concession contracts and service concession contracts ("**GEO No. 34/2006**")

Main provisions

GEO No. 52/2011 passed measures on extending the scope of and rendering efficient the duty to *ex-ante* check the procedural issues of the process of awarding the contracts falling under the scope of GEO No. 34/2006.

Consequently, the requirement provided under GEO No. 30/2006 is eliminated, namely the check of procedural issues shall concern only the procedures of

awarding contracts which have an estimated value equal to or over the ceilings of EUR 125,000, in the case of supply and service contracts, and EUR 4,845,000, in case of works contracts. Currently, the Ministry of Public Finance, which is the central authority responsible for verifications, is authorized to check all procedures of awarding public procurement contracts falling under GEO No. 34/2006, irrespective of the estimated value thereof.

Another major issue regulated under GEO No. 52/2011 in order to render the checking procedures more efficient is to establish the Unit Coordinating and Checking Public Procurement (“UCCPP”), a specialty structure acting at a central level to be coordinated by the Ministry of Public Finance. Departments Checking Public Procurement (“DCPP”) were established at territorial level, under the authority of UCCPP, with a view to checking public procurement. Public officers acting with such structures shall have the capacity as observers.

As to the observers’ checking activity, they shall be entitled to consult the National Authority for Regulating and Monitoring Public Procurement (“NARMPP”). NARMPP’s standpoint shall be deemed as the official interpretation of the public legislation on public procurement and shall be implemented by the observers.

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## Real Estate

Name of enactment

Law No. 90/2011 amending and supplementing Law No. 255/2010 on expropriations for public utility reasons, required to build certain objectives of a national, county and local interest (“Law No. 90/2011”)

Publication

Official Gazette of Romania, Part I, No. 407 of 9 June 2011

Entry into force

12 June 2011

Connections with other enactments

Law No. 255/2010 on expropriations for public utility reasons, required to build certain objectives of a national, county and local interest (“Law No. 255/2010”)

Methodological norms for the implementation of Law No. 255/2010 on expropriations for public utility reasons, required to build certain objectives of a national, county and local interest, approved by Government Decision No. 53/2011

Main provisions

The main amendments brought to Law No. 90/2011 are as follows:

- as to the nature of the works which fall under the scope of expropriations, as regulated under Law No. 255/2010 amended by

Law No. 90/2011, such works are established by the regulation as "*being of public utility*". This amendment was inserted in an attempt to avoid any sort of confusion generated by the former wording, *i.e. "public utility works"*, for a more comprehensible wording.

- Law No. 90/2011 reduces the 30-day term in which the owners of the real estates to be expropriated have the obligation to appear before the expropriator's headquarters for the calculation of a fair compensation, by changing its computation on the basis of business days rather than of calendar days. This amendment renders efficient the principle of expediting the expropriation procedure for reasons of public utility.
- as to the expropriation corridor, this is no longer established based on feasibility studies in the final version of the urbanism documentations, but a third version is inserted in order to establish the expropriation corridor based on the topographic and cadastral documentations approved according to law.
- while prior to Law No. 90/2011 being passed, the expropriation for public utility for performing the rehabilitation works on the seacoast of the Black Sea could be done only based on the urbanism and land development documentations by the authorities of the local public administration, the new regulation inserts the possibility of building the same based on the topographic and cadastral documentations as well, by the authorities of the local public administration and by the authorities of the central public administration.

Repealed enactments

The final article of Law No. 90/2011 provides, in general terms, that any provisions to the contrary are to be repealed.

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