



PACHIU & ASSOCIATES
ATTORNEYS AT LAW

LEGAL UPDATE

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Special points of interest:

- New law on the capital market
- New Penal Code
- Material amendments to Law No. 8/1996 on copyright and neighboring rights
- Consumption Code

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INCORPORATION

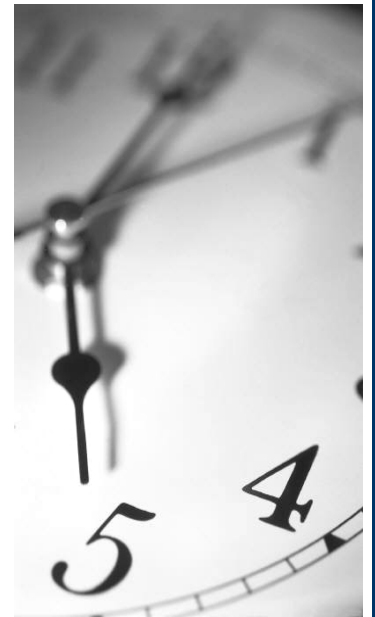
New extension of the deadline for changing the incorporation certificates and operation authorizations

Government Emergency Ordinance No. 51/2004 on the extension of terms for the change of incorporation certificates and fiscal registration certificates for companies, as well as operation authorizations for authorized individuals and family associations was published in the Official Gazette No. 570 of June 29, 2004

The Government decided to extend the term for the change of incorporation certificates and fiscal registration certificates until December 31, 2004. Upon expiry of such term, the companies which have not obtained the new incorporation certificate shall be dissolved *ex jure*, liquidated and de-registered from the Register of Commerce.

The individuals which perform economic activities based on the authorization

issued in accordance with Decree No. 54/1990 have the obligation to obtain the new operation authorization until December 31, 2004. In case of failure to observe such term, the authorized individuals shall be de-registered from the Register of Commerce.



New law on the authorization of natural persons and family associations which perform economic activities

Law No. 300/2004 regarding the authorization of natural persons and family associations which independently carry on economic activities was published in the Official Gazette No. 576 of June 29, 2004

The new law sets forth the conditions and the procedure for obtaining the operating authorization from the City Hall and the formalities for the registration with the Register of

Commerce.

The new law abrogates Law No. 507/2002 on the organization and performing of economic activities

by natural persons and its implementation rules.

This law shall enter into force within 90 days as of its publication with the Official Gazette.

Higher taxes and tariffs for registrations with the Register of Commerce

Government Decision No. 913/2004 approving taxes and tariffs for operations performed by offices of the Register of Commerce was published in the Official Gazette No. 589 of July 1, 2004

The Government resolved to increase taxes and tariffs for operations performed by offices of the Register of Commerce.

TAXATION

The Fiscal Procedure Code was republished.

Government Ordinance No. 92/2003 regarding the Fiscal Procedure Code as amended by Law No. 174/2004 was republished in Official Gazette No. 560 of June 24, 2004

The Fiscal Procedure Code was republished pursuant to the amendments introduced by Law No. 174/2004.

BANKRUPTCY

The Government Ordinance No. 10/2004, regarding the judicial reorganization and the bankruptcy of the credit institutions was approved by law

Law No. 278/2004, for the approval of Government Ordinance No. 10/2004, regarding the judicial reorganization and the bankruptcy of credit institutions was published in the Official Gazette No. 579, of June 30, 2004.

The approval law brings important amendments to GO No. 10/2004 (the "Ordinance").

Any referring to "judicial reorganization" was eliminated from the title and from the content of the Ordinance.

The administrator, which according to the initial text of the Ordinance had competences in the reorganization stage, was replaced with the "interim administrator", appointed by the National Bank of Romania, which has the duty to take the appropriate measures in order to prevent the

diminishing of the assets or the increase of the liabilities of the credit institution, until the liquidator is appointed.

The law also provides in detail the competences of the liquidator.

BANKING

The procedure of approving the distance payment instruments, such as internet-banking, home-banking or mobile-banking

Order No. 218/2004 regarding the procedure of approving the distance payment instruments, such as internet-banking, home-banking or mobile-banking was published in the Official Gazette No. 579 of June 30, 2004

The regulations apply to banks, Romanian legal entities and to branches established in Romania by foreign banks and set forth the procedure to be

observed by the Ministry of Communications and Information Technology, for issuing the certificate for approving the distance payment instruments.

SECURITIES

Law No. 297 on capital market was published in the Official Gazette No. 571 of June 29, 2004

The purpose of the new law is to adjust the national legislation to the provisions of the EU Directives regarding the capital market.

The law compresses the main regulations concerning the capital market in one legal act, and abrogates the Government Emer-

gency Ordinance No. 26/2002 regarding the undertakings for collective investment in securities, the Government Emergency Ordinance No. 27/2002 regarding regulated commodities markets and derivative financial instruments, and the Government Emergency Ordinance No. 28/2002 regard-

ing securities, financial investment services and regulated markets.

The Law shall enter into force within 30 days as of its publication.

New law on the capital market

INTELLECTUAL PROPERTY

Law No. 285/2004 amending and supplementing Law No. 8/1996 regarding copyright and neighboring rights was published in the Official Gazette No. 587 of June 30, 2004

The new law brings substantial amendments to Law No. 8/1996. Among other amendments, we may underline the introducing of new definitions of terms or the re-defining of terms, the introducing of the concept of "sui generis rights,

the introducing special legal provisions regarding the rights of producers of audio-video records and the extending of the penalty regime by including the legal entities.

Law No. 8/1996 regarding copyright and neighboring rights was amended and supplemented

CONSUMER PROTECTION

Law No. 245/2004 on the general safety of products was published in the Official Gazette No. 565 of June 25, 2004

The purpose of the law is to ensure the safety of the products which are on sale. According to the law, the producers have the obligation to put on sale only safe products. The law also provides for specific obligations

of producers and distributors.

The authority which has the competence to supervise the marker as concerns the conformity of products with general con-

ditions of safety and the identifying minor offences and enforcing penalties related thereto is the National Authority for Consumer Protection.

Law on the general safety of products

The Consumption Code

Law No. 296/2004, regarding the Consumption Code was published in the Official Gazette No. 593 of July 1, 2004.

The Consumption Code (the "Code") establishes the legal framework for relationships between the economic agents and the consumers, regarding the acquisition of products and services (including financial services).

The Code sets forth certain prohibitions regarding the forced sales or the conditional sales (sales which are made conditional of acquiring minimum amounts of

products or other products or services).

The obligations of producers, distributors and providers of services, as well as the consumer's rights are analyzed in detail by the Code.

The Code also comprises general provisions regarding the regime of prices and fees and the publicity of products.

For the purpose of inform-

ing the economic agents and the consumers with regard to results of market surveys, opinion polls and distribution strategies, the National Consumption Institute is created, under the supervision of the National Authority for Protection of Consumers.

The Code enters into force as of January 1, 2007.

Protection of acquirers of rights to use real estate assets for a limited period of time

Law No. 282/2004 on the protection of acquirers regarding certain aspects of contracts concerning acquiring of rights to use real estate assets on a limited term was published in the Official Gazette No. 580 of June 30, 2004

The law governs the contracts under which a party acquires a right of using a real estate asset for at least one week per year, concluded for a period of minimum three years.

The law provides for mandatory clauses which have to be included in such agreement, as well as the procedure of annulment or unilateral termination.



New law regarding the public debt

PUBLIC FINANCES

Law No. 313/2004, regarding the public debt was published in the Official Gazette No. 577 of June 29, 2004.

The law sets forth the conditions under which the Romanian Government may contract and reimburse state loans from internal and external markets.

The law also governs the legal regime of the state titles and state guarantees.

The provisions of the law shall be completed with implementation norms to be issued by the Government, as well as

special regulations of the Ministry of Public Finances, the National Securities Commission and National Bank of Romania, regarding the state titles.

The law enters into force as of January 1, 2005. Starting with such date, Law No. 81/1999 regarding the public debt and certain articles of Emergency Government Ordinance No. 45/2003 shall be abrogated.

PUBLIC AUTHORITIES

Law No. 304/2004 regarding judicial organization was published in the Official Gazette No. 576 of June 29, 2004.

The law regarding the judicial organization establishes the rules for the organization of the judicial courts, the formation of the panel of judges, liabilities of the Public Ministry, the organization and operation of the National Institute of Magistrates and judicial assistants.

The law introduces the special tribunals as separate courts (special

tribunals for minors and family, special tribunals for labor and social insurances, commercial tribunal and fiscal-administrative tribunal).

The special tribunals must proceed their activity at January 1, 2008 at the latest.

The law enters into force after 90 days as of its publishing with the Official Gazette, except for certain provisions which enter into force in 2005 or 2008.

New regulations regarding judicial organization

LABOR LAW

Government Resolution No. 938/2004 regarding the conditions for establishing and operation, as well as the procedure for authorization of temporary labor agents was published in the Official Gazette No. 589 of July 1, 2004

The temporary labor agents are commercial entities authorized to employ individuals for the purpose of performing certain temporary activities on behalf and at the request of a third party (the "user", as defined by the Labor Code). Foreign citizens or stateless persons with their domicile or residence in Romania may also be employed by temporary labor agents.

The authorization of the companies as temporary labor agents is issued by the Ministry of Labor, Social Solidarity and Family through their special departments. As a condition to obtain the authorization to operate as temporary labor agent, commercial entities have to establish a financial guarantee. The authorization is valid for a period

The authorized temporary labor agents must register with the National Register for Evidence of Authorized Temporary Labor Agents, to be established under the supervision of the Ministry of Labor.

The Government Resolution also provides for the conditions under which the temporary labor agents may operate.

Temporary labor agents

IT/TELECOM

Order No. 250/189/748/2004 regarding the qualification of software creation activities was published in the Official Gazette No. 573 of June 29, 2004

In accordance with the provisions of the Fiscal Code, individuals who perform software creation activities are exempted from payment of tax on salary. The exemption applies only to incomes earned

based of an individual labor agreement. The order provides the conditions which have to be met by the employees and the activity performed by them in order to benefit from the tax exemption.

Conditions for IT activities to qualify as software creation activities

LEGAL PROFESSION

Law No. 255/2004, for the amendment and supplement of Law No. 51/1995, regarding the organizing and performing of the profession of lawyer was published in the Official Gazette No. 559 of June 23, 2004.

Amendments to Law No. 51/1995, regarding the organizing and performing of the profession of lawyer

The new law brings material amendments to the regulations governing the performing of the profession of lawyer. Lawyers are allowed to perform "fiduciary activities" which consist of holding in trust, for the benefit of the client, of financial funds or assets, as well as of administrating in the name and on behalf of the client of such funds or assets.

Lawyers may provide hosting facilities at their profes-

sional offices for establishing the headquarters of newly incorporated companies, on a temporary basis, and may hold in the name and on behalf of the client shares in such companies.

Another important amendment is the extending of the legal forms in which the profession of lawyer may be exercised, by introducing the limited liability professional civil company. Such limited liability company may be estab-

lished by at least two senior lawyers, has distinct legal capacity and separate patrimony. The minimum amount of the share capital is the ROL equivalent of Euro 10,000.

The National Union of Lawyers was replaced by the National Union of Romanian Bars ("NURB"). The new law comprises detailed provisions regarding the managing bodies of NURB.

CRIMINAL LAW

Law No. 301/2004 regarding the Penal Code was published in the Official Gazette No. 575 of June 29, 2004.

New Penal Code

The new Penal Code divides criminal offences into crimes and offences.

The Code introduced the criminal liability of legal entities. As main punishment which may be enforced against a legal entity the Code provides for penal fine between ROL 10 million and ROL 10 billion.

The most severe complementary punishments for criminal offences committed by legal entities are the dissolution of the legal entity and the suspending of its activity for one to three years.

The new Code shall enter into force after one year as of the date of its publication.

Law No. 290/2004 on the criminal record was published in the Official Gazette No. 586 of June 30, 2004

New law on the criminal record

The new Law regarding the criminal record shall enter into force within 30 days as of its publication.

On the same date Law No. 7/1972 on criminal records shall be abrogated.

**Amendments to
the Criminal
Procedure Code**

Government Emergency Ordinance No. 55/2004 amending the Criminal Procedure Code was published in the Official Gazette No. 592 of July 1, 2004

The amendment consists in the abrogation of paragraph 7 of article 52 of the Criminal Procedure Code,

concerning the recourse against the ruling which rejects the petition for challenging the judge.

**Law regarding
serving of
punishments and
sanctions
ordered by
judicial bodies
during criminal
trials**

Law No. 594/2004, regarding serving of punishments and sanctions ordered by judicial bodies during criminal trials was published in the Official Gazette No. 591 of July 1, 2004

According to the new regulations, the serving of punishments shall be performed under the supervision and authority of a delegate judge. The new regulation covers certain institutions of penal procedure law, such as:

serving of main custody punishments and main non-custody punishments, the regime serving of punishments, imprisonment conditions, the rights and obligations of the persons who are serving punishments, etc.



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