



PACHIU & ASSOCIATES  
ATTORNEYS AT LAW

# LEGAL UPDATE

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## Special points of interest:

- Implementation Norms for the Fiscal Procedure Code
- Law on the consumption credits
- Law on the occupational pensions schemes

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## TAXATION

### **Implementation Norms of the Fiscal Procedure Code**

*Government Resolution No. 1050/2004 regarding the approving of the Implementation Norms of the Fiscal Procedure Code was published in the Official Gazette No. 651 of July 20, 2004.*

Usually, Norms for the implementation of laws are issued for the purpose of clarifying the provisions of such laws. In case of the Fiscal Procedure Code, the implementation norms may be considered as poor in drafting. Various terms and conditions (e.g. terms of communicating statements and reports) provided in the Fiscal Procedure Code were not properly addressed.

Nevertheless, we may note that the implementation norms bring additional information as concerns the registration as VAT payer and de-registration procedures, the fiscal domicile and the fiscal registration of secondary offices of companies.

The Norms also comprise details regarding the methods for calculating the penalties for delayed payment of fiscal debts and interests for rescheduling of payments by the fiscal authorities.

## BANKING

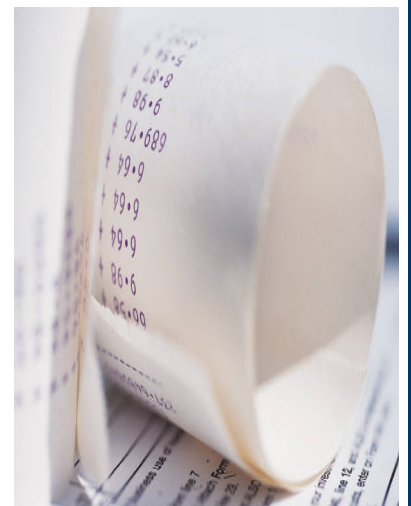
### **Romanian residents have the obligation to notify to the National Bank the operations included in the balance of payment of Romania**

*Norm No. 4/2004 of the National Bank of Romania regarding the reporting for statistics purposes of the operations included in the balance payment of Romania was published in the Official Gazette No. 615 of July 7, 2004.*

Norm No. 4/2004 establishes the obligation of residents on the Romanian territory to notify to the National Bank all operations included in the balance of payment. Such operations are the economic and financial transactions between residents and non-residents, regarding goods, services, revenues, free-of-charge transfers, receivables and financial obligations.

The credit institutions have the obligation to report to the National Bank a wide range of transactions with non-residents, performed in their own name and account.

The residents have also the obligation to notify to the National Bank the non-monetary operations (barters, clearings, etc). The norm enters into force as of January 1, 2005.



**Reference interest rate for July, 2004**

**Internal Note No. 14/2004 of the National Bank of Romania, regarding the reference interest rate for July 2004 was published in the Official Gazette No. 621 of July 8, 2004.**

The reference interest rate established with 0.5 points than the rate established for by the National Bank of Romania for June 2004. July 2004 is 20.75% per annum, lower

## ACCOUNTING

**New regulations regarding the organizing and management of the simple accounting system**

**Order of the Ministry of Public Finances for the approval of the Implementation norms regarding the organizing and managing of the simple accounting system by natural persons who have the capacity of taxpayers, according to Law No. 571/2003 on the Fiscal Code, was published in the Official Gazette No. 642 of July 16, 2004.**

The implementation norms do not bring major amendments to the regulations governing the organizing of the simple accounting system by natural persons. The Order comprises rules regarding the justifying and

financial-accounting documents, rules regarding the registration of incomes and expenses, and provides for the conditions in which expenses are considered deductible or are subject to limited deduction.

The order also includes forms of financial-accounting documents required for the organization and management of simple accounting, as well as instructions for filling in of such documents.

**Order No. 947/2004 on approval the System of accounting reporting on June 30, 2004 of economic entities was published in the Official Gazette No. 623 of July 9, 2004**

**Half-year accounting reports for 2004**

The economic agents, regardless of the legal form under which they perform their activity, including legal persons undergoing liquidation procedure, have the obligation to draw up half-year accounting reports, and to register the reports at the territorial units of the

Ministry of Public Finances. The accounting reports comprise the balance-sheet, the profit and loss account and the informative data report. Such reports must be registered until August 10 or August 20, subject to the type of accounting system used by the reporting entity.

## SOCIAL PROTECTION

**Law No. 343/2004 on the amending and supplementing the Emergency Government Ordinance No. 102/1999 regarding the special protection and the employment of disabled persons was published in the Official Gazette No. 641 of July 15, 2004.**

**Protection of disabled persons**

Among other amendments, the law provides that economic agents having 75 employees or more and public institutions with at least 25 contractual positions have the obligation to employ a number of disabled persons representing at least 4% of the total number of employees

or contractual positions provided by their organizational chart. The failure to observe these provisions trigger the obligation of the economic agent/public institution to pay to the state budget, on a monthly basis, an amount equal with the minimum gross salary in the

Romanian economy, multiplied with the number of positions unoccupied by disabled persons. The maximum threshold for penalties in case of breach of legal provisions regarding the protection of disabled persons was increased to ROL 60 million.

## CONSUMER PROTECTION

**Law No. 289/2004 regarding the legal regime of the consumption credit agreements for consumers natural persons was published in the Official Gazette No. 611 of July 06, 2004.**

The purpose of the new law ("**Law 289/2004**") is to implement in the Romanian legislation the provisions of the CEE Directive on consumption credits.

Law 289/2004 does not comprise a definition of the consumption credit, but enumerates the types of credits which are not governed by its provisions (such as loans for acquisition or renovation of real estate properties, interest-free loans, loans having a value of less than EUR 200 or exceeding the threshold of EUR 20,000 etc). The new law has a broad definition of the creditor: one or several legal or *natural*

persons who, within their commercial or business activity, grant credits to consumers". The entities which grant consumption loans or mediate such loans must obtain in advance an official authorization, except the credit institutions which are authorized by the National Bank of Romania.

The consumers are defined as the natural persons who aim to fulfill a legal right or interest exceeding their commercial or business activity, by concluding the type of agreements provided for by Law 289/2004. Law 289/2004 shall enter into force after 6 months as of its publishing date.

***New regulations regarding the consumption credit for consumers***

**Government Decision No. 891/2004 establishing certain measures of supervision of the products market on regulated sectors, provided by Law No. 608/2001 regarding products conformity assessment was published in the Official Gazette No. 620 of July 8, 2004**

The purpose of the market supervision is to ensure the observance of the technical regulations provided by Law No. 608/2001 regarding assessments for products conformity, by the entities which introduce products on the market or entities responsible for the functioning of such products. The supervision performed by the competent authorities implies form examinations of products (e.g. the applying of legal markings on the products) and substance examinations (the compliance with the general conformity regulations).

The Decision defines the material non-conformities, and presents the legal actions which may be taken by the supervising agent in case of non-conformity. The Decision shall enter into force after 90 days as of its publication.



***Measures of supervision of the products market***

## LABOR LAW

**Law No. 249/2004 regarding the occupational pensions was published in the Official Gazette No. 600 of July 5, 2004**

Law No. 249/2004 (the "**Law**") sets forth the legal principles for organizing and management of optional occupational pensions schemes (the "**Schemes**") and occupational pensions funds. The occupational pension is the amount paid on a regular basis to a participant, apart and in addition to the state pension system.

The right to initiate a Scheme belongs to the employer, to the trade-union or to the representatives of employees.

The Schemes are provided by administrators. Administrators are entities organized as joint-stock companies, having as sole scope of activity the collecting, administration and investment of the financial resources of an occupational pensions fund, and the payment of the pensions.

The occupational pensions fund is the fund set up as civil company in accordance with the provisions of the Civil Code and the special provisions of the Law.

***The optional occupational pensions schemes are introduced in the Romanian legislation***

The Scheme must provide for the amount and the periodicity of the contributions, the method of splitting the contribution between the employer and the employee, rules regarding the investing of the funds and payment of pensions. The Schemes must obtain the prior approval from the Insurance Supervisory Commission ("ISC"), which is the governing and monitoring body in the field of optional occupational pensions. The Law governs in detail the legal regime of the occupational pensions funds and the administrators.

The occupational pensions fund must have at least 100 members. The fund is represented in the relationships with the administrator by the Coordination council, which is composed of members elected by the employer and by the representatives of the employees. The administrator must obtain the prior authorization of ISC, prior to its registration with the Trade Registry. The minimum share capital of the administrator is the ROL equivalent of EUR 2 million. The right to receive the payments representing occupational pension annuities

becomes due when the following conditions are cumulatively met:

- the participant reached the legal retiring age;
- the participant paid at least 60 monthly contributions;
- the value of the contributions allows the payment of the minimum amount of the occupational pension set forth by ISC.

The Law enters into force as of January 1st, 2005.

## **PUBLIC AUTHORITIES**

### ***Law on the institution of prefect***

*Law No. 340/2004 regarding the prefect was published in the Official Gazette No. 658 of July 21, 2004*

The law represents the general legal framework for the institution of prefect. The law establishes the duties and responsibilities of the prefect, the organizing and management of the Body of Prefects and Body of Sub-prefects, as well as the legal regime of the acts issued by the prefect. The law abrogates the provisions regarding the prefect comprised by Law No. 215/2001 regarding the public administration.

### ***New law regarding the Superior Council of the Magistracy***

*Law No. 317/2004 regarding the Superior Council of the Magistracy was published in the Official Gazette No. 599 of July 2, 2004*

The law governs the organizing and the management of the Superior Council of the Magistracy, an independent body having as purpose the supervising of the observance of law by magistrates and the ensuring the proper functioning of the judiciary system. The law enters into force after 90 days as of its publishing with the Official Gazette, and abrogates the provisions regarding the Superior Council of the Magistracy from Law No. 92/1992 regarding the organizing of the judicial authority.



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