



**PACHIU & ASSOCIATES
ATTORNEYS AT LAW**

LEGAL UPDATE

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Special points of interest:

- **Simplification of formalities for registrations with the Trade Registry**
- **Amendment of the Civil Procedure Code**
- **Changing ex officio of the fiscal domicile of the taxpayer**

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INCORPORATION

Simplification of formalities for registrations with the Trade Registry

Law No. 359/2004 regarding simplification of formalities for registrations with the Trade Registry was published in Official Gazette No. 839 of September 13, 2004.

The term for the issuance of the Certificate of Incorporation and of the Certificate for Registration of Amendments was decreased to maximum 10 days as of the registration of the application, if not otherwise provided under the resolution of the delegate judge.

At the date of issuance by the Office of the Trade Registry under the tribunal of the Certificate of Incorporation mentioning the sole registration code or, accordingly, at the date of issuance of the Certificate for Registration of Amendments or prior to commencement of an activity requiring authorization, the applicant has the obligation to request at the Trade Registry the issuing of the authorizations required by law.

At the request of the applicant, the documentation required to obtain an authorization of operation for legal entities or secondary headquarters may be filed simultaneously with the application for registration, but the term for the issuance of such authorizations shall commence as of the date of registration

with the Trade Registry of the legal entity or the date of amendment of its Constitutive Acts.

In case of irregularities in the documentation for authorizations, or failure to observe the legal provisions, the delegates of the ministries involved in the authorizing procedure shall notify such facts to the applicant, at the registered headquarters, as well as to the Trade Registry Office, granting a 30-day term to remedy the irregularities. Such term commences as of the date of receipt of the notification and may be extended at the explicit request of the applicant. Upon the remedy of the irregularities, the 20 days legal term for issuing the authorizations starts to run. As an exception, the term for issuing the authorizations is of 30 days as of the registration of the application for authorizations, for applicants who operate in more than five secondary headquarters, as well as for those with more than 5 activities requiring evaluation for the purpose of authorization.

If one or more of the involved public authorities notifies the refusal to issue an authorization, the Trade Registry Office shall issue the annex to the Certificate of Incorporation. The annex shall include



the mention regarding the refusal of the authorization and shall be issued to the applicant at the term provided by law.

The Law also provides that performance of any activity prior to obtaining the authorization for operation required by law shall be construed as a minor offense and shall be subject to a fine between ROL 10,000,000 and ROL 100,000,000, if such act is not construed by the law as criminal offense.

The Program for supporting the development of small and medium-size enterprises

Government Decision No. 1.461/2004 approving the Program for supporting the development of small and medium-size enterprises with funds in the limit of the amounts paid for the reinvested profit tax was published in Official Gazette No. 852 of September 17, 2004.

The implementation of the Program shall be carried out by the National Agency for Small and Medium-size Enterprises and Cooperation.

The beneficiaries of such Program shall be the legal entities organized on the basis of Law No. 31/1990 on commercial companies, as well as the handicraft cooperation, consumption

cooperation and credit cooperation.

The above-mentioned entities shall benefit from such Program if they meet the following conditions:

- their share capital is entirely private;
- they meet the conditions provided by Law No. 346/2004 on the incentives for the establishment and development

of small and medium-size enterprises;

- they fulfilled their payment obligations;
- they are not in bankruptcy;
- the result of the prior fiscal year is positive.

The Decision provides for the types of financial aid and methods of performance of such Program as well.

CIVIL LAW

Government Emergency Ordinance No. 65/2004 amending the Civil Procedure Code was published in Official Gazette No. 840 of September 14, 2004.

Amendment of the Civil Procedure Code

According to the new amendments of the Civil Procedure Code (**“the Code”**), the tribunals shall judge as *first courts* the cases and the petitions in the civil field having as object a value exceeding ROL 1 billion, except petitions for division of goods.

The tribunals shall judge as *appeal courts* the appeals field against the decisions issued by courts in first instance in the following

cases:

- petitions for divorce;
- petitions for division of goods, exception those that are not subject to appeal;
- petitions regarding personal relations between parents and minor children;
- petitions regarding filiations and any other cases expressly provided by law.

The Code also provides that the Court of Appeal shall judge not only as a first court and as an appeal court, but also as a *second appeal court* the second appeals field against the decisions issued by tribunals as appeal courts, as well as in any other cases provided by law.

BANKING

Circular No. 22/2004 regarding the reference interest rate of the National Bank of Romania for September 2004 was published in Official Gazette No. 829 of September 8, 2004.

The reference interest rate for September 2004

The reference interest rate established by the National Bank of Romania for September 2004 is 19.24% per year, lower by 1.05 % than the rate established for August 2004.

TAXATION

Order No. 526/2004 on the procedure of changing ex officio the fiscal domicile of the taxpayer was published in Official Gazette No. 845 of September 15, 2004.

The procedure of changing ex officio the fiscal domicile of the taxpayer

The National Agency of Fiscal Administration has adopted the procedure changing *ex officio* the fiscal domicile of the taxpayer.

Therefore, in well grounded situations, the fiscal domicile of the taxpayer can be changed by the fiscal authorities. The Order does not define the concept of "well grounded situations".

Such change shall be initiated by the fiscal authority in whose jurisdiction the taxpayer established its fiscal domicile without filing of the application for registration of a new fiscal domicile.

The fiscal authority shall draft a note regarding the *ex officio* change of the fiscal domicile of the taxpayer which shall be considered a application for registration of

a fiscal domicile.

After drafting the above-mentioned note, changing the fiscal domicile of the taxpayer shall be registered in accordance with the procedure provided for the registration upon request of the fiscal domicile of the taxpayer.

COMMERCIAL LAW

Government Decision No. 1454/2004 approving criteria for the implementation of retail sale structures on large areas by economic agents intending to form such a sale structure was published in Official Gazette No. 854 of September 17, 2004.

Criteria for the implementation of retail sale structures on large areas

Government Decision No. 1454/2004 approving criteria for the implementation of retail sale structures, (the „**Decision**“) provides for the obligation of obtaining an authorization for the implementation of retail sale structures on large areas („**implementation authorization**“) by economic agents intending to form such a sale structure.

Retail sale structures on large areas shall be construed as sale structures with an area exceeding 1,000 sqm.

For the purpose of obtaining the implementation authorization, sale agents shall file an application with the county council in whose jurisdiction the sale structure is to be located (for Bucharest, the application shall be filed with the sector city hall). The peti-

tion shall be forwarded to a commission to be established for such purpose under each county council within 30 days as of enforcement of the Decision. The petition shall be forwarded as follows:

- prior to obtaining the building permit – for new buildings and for the modification, consolidation or expansion of already existing buildings;
- prior to obtaining the authorization for operation – for changing a commercial practice or restoration of certain unused sale structures to the commercial circuit;

The petitions regarding the issuance of the implementation authorization shall be accompanied by a market and impact survey, drafted in compliance with the criteria established under the Decision. The term for the issuance of the implementation authorization

shall be established under the rules of organization and functioning of each commission, which shall be displayed at the headquarters of the county council (of the sector city hall, in the case of Bucharest municipality).

Also defined in the Decisions are the terms *commercial center, supermarket and hypermarket*. The typology of retail sale structures shall be established depending on the categories of goods on sale (unspecialized shop, specialized shop and retail sale activities outside shops).

The retail sale structures typology shall be considered by the competent authorities for the authorization of identification panels/signs of any type that shall be located at the entrance of the retail sale structure.

REGIME OF FOREIGNERS

Social integration of foreigners who acquired a form of protection in Romania

Government Decision No. 1.483/2004 on the approval of the Implementation Norms of Government Ordinance No. 44/2004 regarding the social integration of the foreigners who acquired a form of protection in Romania was published in Official Gazette No. 863 of September 22, 2004.

The applications for participation in the integration program shall be filed by the applicant to the National Office for Refugees ("NOR").

For foreigners who acquired a form of protection in Romania and did not benefit from integration program, the decision re-

garding the accepting of the applicant in the integration program shall be adopted by NOR within 5 working days as of the registration of the application .

The foreigner who acquired a form of protection in Romania may also file a petition for accommodation in the centers administrated by NOR. The

accommodation in such centers shall involve obligation of the foreigner to pay a rent.

The decision also provides for the modality of granting by NOR of the financial aid and the subvention for the rent for domicile.



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