



PACHIU & ASSOCIATES  
ATTORNEYS AT LAW

# LEGAL UPDATE

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## Special points of interest:

- Amendments to the insurance companies law
- Simplification of incorporation procedures
- Order regarding business incubators

## Inside this issue:

Insurance	1
Incorporation	2
Consumer Protection	3
Corporate	3
Taxation	4

## INSURANCE

### Amendments to the law on insurance companies and insurance supervision

*Law No. 403/2004 amending and supplementing Law No. 32/2000 regarding insurance companies and insurance supervision was published in Official Gazette 976 of October 25, 2004.*

Law No. 403/2004 (the “Law”) brings important amendments to Law No. 32/2000 on insurance companies and insurance supervision, by implementing into the Romanian legislation the provisions of the relevant EU Directives. The amendments are focused on creating the legal framework for the provision of insurance services in Romania by entities established in an EU member state or in a state outside EU, as well as the provision of insurance services in an EU member state by Romanian entities. In this respect, new chapters were added: Chapter III<sup>1</sup>: The right of residence and services supply freedom of insurers, Chapter III<sup>2</sup>: Rules applying to subsidiaries in Romania of an insurer with its social headquarters outside EU, and Chapter III<sup>3</sup>: Rules applying to branches of parent companies governed by law of a third state, and for a parent company acquiring the capacity of significant shareholder.

The Law comprises an extensive part of definitions.

New definitions were added - definition of member states, host member states, insurance holdings, joint insurance holdings, etc.

The Law also amended some definitions - the definition of *insurer* was amended by including the branches of an insurance company or a mutual company from a member state which obtained a permit from the competent authority of the origin member state; the definition of *significant shareholder* was amended by increasing the shareholding threshold from 5% to 10%.

The Law has a special paragraph of definitions for insurance and reinsurance mediators. Reinsurance agents and reinsurance brokers as well as reinsurance mediation activity are defined separately from insurance agents, insurance brokers and insurance activity.

An important amendment is the interdiction for an insurer to conduct both life insurances and general insurances. By way of exception, providing of life insurance may be cumulated with providing of accident insurances and health insurances.

As concerns the insurance/reinsurance mediation activities, the Law establishes more severe conditions for the authorization of agents and brokers.

The insurance agents natural persons must be author-



ized and/or registered with the competent authorities, must have specialized professional training and/or knowledge and skills compliant with the practice of such activity, must hold a valid insurance policy for professional civil liability or an equivalent security provided by an insurer on whose behalf the insurance agent works, valid for the European Community and for the European Economic Area.

The name of the insurance brokers must comprise the following words, according to the case: “*insurance broker*” or “*insurance-reinsurance broker*” or “*reinsurance broker*”. Insurance brokers also have the obligation to hold a valid insurance policy for professional civil liability for the European Community and for the European Economic Area.

As concerns the freedom to supply insurance services, the

Law provides that the authorization granted to an insurer by the Insurance Supervisory Commission shall be valid in the European Community and the states in the European Economic Area, in compliance with the residence right and services supply freedom conditions. Any insurer with its social headquarters outside the European Union intending to establish a subsidiary or an

agency in Romania must request a formal authorization by the Insurance Supervisory Commission.

Within 90 days as of enforcement of the Law, the Insurance Supervisory Commission shall issue implementation norms for the amended version of Law No. 32/2000.

The Law entered into force after three days as of its publication with the

Official Gazette of Romania.

The definitions and provisions of the Law involving Romania's status of EU member state, as well as certain provisions regarding the name of the authorization granted for several insurance classes and provisions regarding auxiliary risks shall apply as of the date of Romania's adherence to the European Union.

## INCORPORATION

*Emergency Government Ordinance No. 75/2004 amending and supplementing Law No. 359/2004 regarding simplification of formalities of registration with the Register of Commerce of natural persons, family associations and legal entities, their fiscal registration as well as operation licensing of legal entities was published in the Official Gazette No. 932 of October 12, 2004.*

### **Simplified procedure for incorporation and authorization of companies**

The main amendment brought by G.E.O. 75/2004 concerns the issuance of the operation licenses based on the affidavit of the economic agent attesting the observance of the conditions imposed by law for developing the respective activity.

The applicant shall file, together with the application for incorporation, a standard affidavit, signed by the shareholders or the administrators, attesting as applicable that:

- a. the legal entity does not perform the stated activities at the principal or secondary headquarters, for a period of a maximum of three years;
- b. the legal entity observes the conditions for operation provided by the specific rules regarding fire prevention and manage-

ment, sanitary, sanitary-veterinary, environment protection and labor protection, for the activities stated in the affidavit.

If the competent public authorities establish that the legal conditions for operation are not met, they notify this to the applicant, at its registered headquarters, granting a term for remedy of such irregularities. The term shall start as of the date of receipt of the notification and may be extended at the explicit request of the applicant filed with the competent public authorities.

The activities with a significant impact on environment shall be licensed as regards environmental protection by the environmental protection compe-

tent bodies, at their headquarters. The licensing procedure and the list of activities with significant impact on environment shall be established by an order of the minister of environment and water management, within 30 days as of enforcement of Law No. 395/2004.

The term for issuance of the certificate of incorporation and, as applicable, of the certificate for registration of amendments, shall be three days, respectively five days, calculated as of the registration of applications, unless delegate judge resolves otherwise.

G.E.O. 75/2004 entered into force after 30 days as of its publication in the Official Gazette of Romania.

## CONSUMER PROTECTION

*Order of the Ministry of Agriculture, Forests and Rural Development No. 690/2004 on the approval of the Rules regarding the Terms and Criteria for Certifying Traditional Products was published in the Official Gazette No. 938 of October 14, 2004.*

The traditional product is the product obtained from traditional raw materials, which has a traditional composition or method of production and/or processing reflecting a traditional technological production process and/or processing, which clearly distinguish it from other similar products of the same category.

Certification of traditional products is the recognition of traditionalism of a product through its registration with the traditional products register kept by the Ministry of Agriculture, Forests and Rural Development.

Registration is not allowed for a product the traditionalism of which is due to:

- a. its geographical source and origin;
- b. the application of a technological innovation

For the purpose of being certified as a traditional product, such product should be compliant with a specifications file, comprising mainly information about the method of production and description of the product features attesting its traditionalism.

### **Certification of Traditional Products**

## CORPORATE

*Order of the President of the National Agency for Small and Medium Enterprises No. 215/2004, approving the Procedure for Implementing the Multi-annual National Program for the Period 2002-2005 for Establishing and Developing Business Incubators was published in the Official Gazette No. 928 of October 12, 2004.*

The program shall be initiated with a pilot stage, namely the establishment of three business incubators in the areas of Hunedoara, Brasov and Alba.

The business incubator shall be established under a joint-venture contract between representatives of the local public authorities, commercial entities, Agencies for Regional Development. Such entities hold the capacity of local partners and must have the ability to host and administrate a business incubator, to provide technical assistance and to instruct the potential entrepreneurs during the period prior to the incubation.

The joint-venture contract shall provide specific clauses regarding the term of the contract, the contribution of the parties for the purpose of ensuring the joint services and incentives offered by the business incubator, the conditions for providing an incubator space and utilities.

Through the Administrator of the Incubator,

which shall be a subcontracted company, the small and medium-size enterprises shall benefit from financial and technical assistance within the program. The Administrator of the Incubator shall be selected under the public acquisition procedure provided by the legislation in force.

The Administrator of the Incubator shall manage the activity of the Business Incubator, benefiting from financial and technical assistance granted under the program.

The beneficiaries of the program shall be potential entrepreneurs established as commercial entities organized in compliance with Law 31/1990 regarding companies, republished, and Law 346/2004 regarding incentives for the establishment and development of small and medium-size enterprises ("SME"), which cumulatively meet at the date of request the eligibility criteria mentioned by Order 215/2004.

### **Business Incubators**

## TAXATION

### **Charter of Rights and Obligations of Taxpayers during Fiscal Inspections**

*Order of the President of the National Fiscal Administration Agency No. 713/2004 on the approval of the Charter of Rights and Obligations of Taxpayers during Fiscal Inspections was published in the Official Gazette No. 977 of October 25, 2004.*

Prior to performing the fiscal inspection, the fiscal body shall send to the taxpayer a written fiscal inspection notice, as follows:

- 30 days prior to commencement of the fiscal inspection, for major taxpayers;
- 15 days prior to commencement of the fiscal inspection, for other taxpayers.

The taxpayer may request postponement of the date of commencement of the fiscal inspection only once and on justified grounds.

The fiscal inspection shall be performed once for each tax, fee or social contribution and for each period subject to verification/taxation.

However, if additional data subsist upon conclusion of the fiscal inspection and until the date of commencement of the prescription term, which are not known by the fiscal inspection bodies upon verification, or in case of calculation errors that would impact on such results, the competent chief of fiscal inspection may decide a second verification.

Priests, lawyers, notaries public, fiscal consultants, court executors, auditors, expert accountants, medical doctors and psychotherapists may refuse to supply information regarding data of which they became aware during the exercise of their profession.

If, during the fiscal inspection, the taxpayer is subject to withholding of documents, acts, writs, registers and financial-

accounting documents or any material element attesting to the establishment, registration and payment of the fiscal obligations by the same, the fiscal inspection body shall draft a document mentioning all elements required to individualize the relevant proof or evidence, mentioning that such was withheld by the fiscal body, in compliance with law.

If a taxpayer is unsatisfied with the outcome of the fiscal inspection, it may challenge the decision for taxation issued by the fiscal inspection body on such occasion.

The challenge shall be filed in writing within 30 days as of notification of the outcome of the fiscal inspection with the fiscal body whose document is challenged.

The duration of the fiscal inspection may not exceed 3 months. For major taxpayers and taxpayers with secondary offices the length of the inspection may not exceed 6 months.

Regardless of the place in which the fiscal inspection is performed, the fiscal inspection body has the right to inspect any business location of the taxpayer or any other locations where taxable goods exist or in which activities are performed from which income is obtained, in the presence of the taxpayer or a person appointed by such taxpayer.

Upon the taxpayer's consent and with the approval of the fiscal inspection body, the fiscal inspection may be performed also outside the taxpayer's regular business hours.



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