



PACHIU & ASSOCIATES
ATTORNEYS AT LAW

LEGAL UPDATE

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Special points of interest:

- Postponement of enforcement of certain provisions of the Fiscal Code
- New provisions regarding the forex regime
- Possibility to request information from the Competition Council

TAXATION

Postponement of enforcement of certain provisions of the Fiscal Code

Emergency Government Ordinance No. 30/2005 amending certain provisions of Government Emergency Ordinance No. 24/2005 amending and supplementing Law No. 571/2003 regarding the Fiscal Code was published in Official Gazette No. 367 of April 29, 2005.

In accordance with the provisions of Emergency Government Ordinance No. 30/2005 (“the **Ordinance**”) the enforcement date of the new provisions regarding the 10% income tax applicable to incomes from interests, securities transfers, forex operations and from the transfer of real estate from the personal patrimony, has been postponed from May 1, 2005 to June 1, 2005.

The provisions concerning the value added tax exemptions are also to be in force as of June 1, 2005.

BANKING

New provisions regarding the forex regime

National Bank of Romania Regulation No. 4/2005 regarding the foreign exchange regime was published in Official Gazette No. 297 of April 8, 2005

According to the new National Bank of Romania (“**NBR**”) Regulation, the current and capital foreign exchange transactions can be freely performed between residents and non-residents both in foreign and national currency.

Forex operations between residents

Payments, incomes, transfers and all other such operations between residents, which are the object of trade with goods and services, are performed only in the national currency (ROL), with the exception of the exempted operations set forth in the Regulation.

The operations that do

not make the object of trade with goods or services can be freely performed either in national or foreign currency. It is important to notice that these operations, as well as those mentioned above as exempted, can be performed in foreign currency based only upon the mutual consent of the parties.

Regime applicable to the non-residents

Non-residents may acquire, hold and use financial assets both in national or foreign currency. In compliance with the new provisions, non-residents may open and maintain in Romania accounts in foreign and national currency. The non-residents can repatri-

ate and transfer such financial assets.

Protection measures

If the capital flows on short term reach significant rates causing pressure over the forex market and major perturbations to the NBR monetary policy and to the exchange rate leading to major variations of the internal available cash, the NBR can apply protection measures as regards capital movements over a period that cannot exceed two months. Such measures need to be notified to the EU Commission.

Upon enforcement of this Regulation, NBR Regulation No. 1/2004 was abrogated.

Inside this issue:

Taxation	1
Banking	1
Competition	4
Civil Law	4

National Bank of Romania Rule No. 3/2005 regarding the functioning of the inter-banking foreign exchange market was published in Official Gazette No. 297 of April 8, 2005

New provisions regarding the inter-banking forex market

The inter-banking forex market comprises the forex transactions performed by the brokers (credit institutions authorized to operate in Romania) and by the NBR. Such brokers can conclude forex transactions in their own name and behalf or in their own name but on client's behalf.

The minimal conditions that must be met in order to participate as a broker on the forex market are as follows:

- (a) The existence of a distinctive organizational structure and of a secure specific space;
- (b) The delimitation of attributions and the division of the forex market activities on separate compartments (front office, back office, cipher, banking correspondence);
- (c) Own rules regarding the procedures to be applied in relations with clients and with the department authorized to perform transaction on the inter-banking forex market;
- (d) Assignment of the specific personnel to deal with such transaction;
- (e) The existence of correspondence

relationships established through accounts opened abroad, for at least the following two convertible currencies: EUR and USD;

- (f) The existence of an operational system comprising information equipment and specific equipment for payment and communications.

The inter-banking forex market operates each banking day from 9 a.m. to 1 p.m. It is mandatory to display, within the business hours, the exchange rates of the national currency – ROL – (sale/purchase) – spot, forward – for at least the following convertible currencies: EUR and USD.

The brokers shall unconditionally perform the forex transactions and shall notify clients through a statement of account.

The NBR shall publish the exchange rate each banking day at 1 p.m. based upon exchange rates displayed by the brokers.

Any disputes regarding the implementation of this Rule shall be subject to arbitration by the NBR only after the parties attest to the fact that all possibilities to solve the dispute amicably were exhausted.

National Bank of Romania Rule No. 5/2005 regarding the authorization of forex operations was published in Official Gazette No. 297 of April 8, 2005

New provisions regarding the authorizations of forex operations

According to the new provisions, it is still mandatory to obtain the NBR authorization for operations with financial instruments currently transacted on the monetary market as well as the operation on current accounts and deposit accounts opened by residents abroad. Such operations shall be performed without NBR's authorization as of September 1, 2005.

The following are exempted from NBR's authorization:

- (a) the account in national currency opened in

countries with whom Romania has concluded arrangements of regional convertibility;

- (b) credit institutions for the activities performed based on the operation authorization;
- (c) embassies, consulates or other permanent representation offices and missions of Romania abroad, for the amount necessary for such activities;
- (d) natural persons, for income obtained during their residence abroad;
- (e) resident owners of real estate for incomes ob-

tained from such transferred properties/ amounts required for taxes and expenses incurred with the administration of the property; residents for the amounts whose repatriation is temporarily obstructed based on the legal provisions from the relevant country.

NBR's authorization is no longer required for deposit accounts opened by non-residents in national currency in Romania with credit institutions.

National Bank of Romania Rule No. 6/2005 regarding the physical import and export of in cash payment instruments was published in Official Gazette No. 297 of April 8, 2005

NBR Rule No. 6/2005 establishes as in cash payment instruments also the negotiable instruments at bearer, including: (i) monetary instruments at bearer, such as travelers cheques; (ii) negotiable instruments (cheques, promissory notes, payment orders/letter of procurement) and (iii) instruments (including cheques, promissory notes and payment orders/letter of procurement) executed, without mentioning the beneficiary's name.

The natural persons entering or leaving Romania must declare to the customs if they hold payment instruments in cash in amount of at least EUR 10,000 /person/travel (a 10 times higher amount than the one previously provided). Failure to comply with such obligation is construed as a minor offense. The obligation shall not be considered fulfilled if the given information is false or inaccurate.

New provisions regarding the physical import and export of in cash payment instruments

National Bank of Romania Rule No. 7/2005 regarding protection measures to be applied following the liberalization of deposit accounts in national currency (ROL) was published in Official Gazette No. 297 of April 8, 2005

If, following the liberalization of the deposit accounts in ROL, opened by non-residents with credit institutions in Romania, the capital flows on short term reach major rates causing pressure over the forex market and serious perturbations to the NBR monetary policy and to the exchange rate leading to major variations of the internal available cash, the NBR can apply one or more of the following protection measures:

- (a) Retention into account, at NBR, over a determined period, of part of:
- the amount in foreign currency from the capital entrance, used by a resident or non-resident to be converted in ROL, in order to constitute a deposit to a Romanian credit institution;
 - the amount in foreign currency resulted from the conversion of a ROL deposit account opened by a resident or non-resident with the Roma-

- nian credit institution, in order to be transferred abroad;
- (b) Establishment of a higher rate applicable to the mandatory minimal reserves for the ROL deposits opened by residents and non-residents with Romanian credit institutions, having as source amounts in foreign currency representing capital entrances converted into ROL;
- (c) Introduction of a commission for the transaction on the inter-banking forex market generated by the entrance/exit of capital belonging to residents or non-residents, having as object the sale/purchase of foreign currency in order o deposit/withdraw amounts in ROL to/from deposits opened with the Romanian credit institutions.
- (d) Introduction of restrictions to the due date of the ROL deposits opened by residents and non-residents with Romanian credit institutions, having capital entrance as source.

Protection measures regarding the liberalization of deposit accounts in national currency

National Bank of Romania Circular No. 10/2005 regarding the reference interest rate of the National Bank of Romania for April 2005 was published in Official Gazette No. 288 of April 6, 2005

Reference Interest Rate for April 2005

The reference interest rate established by the National Bank of Romania for April 2005 is 8.45% per year, lower by 2.30 units than the rate established for March 2005.

COMPETITION

Possibility to request information from the Competition Council

Order No. 68/2005 of the Competition Council regarding the implementation of the instructions regarding the informal orientations concerning new matter raised by the implementation, in individual cases, of Article 5 and Article 6 of Competition Law No. 21/1996 (leading letters) was published in Official Gazette No. 356 of April 27, 2005

In compliance with Order No 68/2005 (the “**Order**”), economic agents are entitled to request from the Competition Council the issuance of a leading letter regarding the new aspects concerning the interpretation of Article 5 and Article 6 of Competition Law No. 21/1996 (“**Law No. 21/1996**”).

The Competition Council has the right to decide on the suitability to issue leading letters based on several criteria. Such criteria are:

(i) there are no legal solu-

tions regarding the matter raised; (ii) the issuance of the leading letter shall be useful; (iii) the issuance of the leading letter it is possible based on the provided information.

The leading letter shall not be issued in case the aspects submitted to the attention of the Competition Council are subject to the procedures before the Competition Council or in case there is a pending court trial.

The leading letters shall

be made public on the website of the Competition Council with the observance of the confidentiality regulations.

The leading letters are not deemed as decisions and, consequently, are not binding on the Competition Council for the implementation of Article 5 and/or 6 of Law No. 21/1996, although they may be taken into account when solving a case by the Competition Council and by the court.

CIVIL LAW

Amendment to the Code of Civil Procedure

Constitutional Court Decision No. 176 of March 24th, 2005, regarding the claim of unconstitutionality of the provisions of Article 302¹ Paragraph 1 letter a) of the Code of Civil Procedure, was published in Official Gazette No. 356 of April 27^e, 2005

According to the provision of Article 302¹ Paragraph 1 letter a) of the Code of Civil Procedure a petition for appeal failing to specify the name, domicile or residence of the parties, or, for legal entities, the name and social headquarters, as well as the number of registration with the Register of Commerce, the sole registration number and the bank account, and – if the appellant resides abroad – the chosen domicile in Romania, is null and void. The Constitutional Court (“the **Court**”) noticed the presence of these coordinates in merely all the deeds of a court file and considered unnecessary the above mention sanction.

Therefore the Court has admitted the claim of unconstitutionality filed against the provision of the afore mentioned article of the Code of Civil Procedure. Following the Court’s decision, it is no longer mandatory for the appellant to specify the above-listed coordinates in the content of a petition for appeal.



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