

## **Newsletter**

### **Issue No. 70**

#### **Romanian legal developments enacted between June 1, 2005 and December 31, 2005**

##### ***FISCAL LAW***

- *Law No. 163/2005 approving Emergency Government Ordinance No. 138/2004 on amending and completing Law No. 571/2003 concerning Fiscal Code (“**Law No. 163/2004**”)*

Law No. 163/2004 was published with the Official Gazette No. 466 of June 1, 2005.

Under Law 163/2004, a number of nine types of incomes are to be taxed under the income taxation rules, such as:

- incomes from independent activities;
- incomes from salaries;
- incomes from transfer of goods’ use;
- incomes from investments;
- incomes from pensions;
- incomes from agricultural activities;
- incomes from prizes and gambling;
- incomes from real estate transfers;
- incomes from other sources;

Under Art. 10 of Law 163/2005, tax payers shall be entitled to transfer 2% of their taxes, to the benefit of a charity or non-profit organization.

##### ***CIVIL PROCEDURAL LAW***

- *Law No. 219/2005 approving Emergency Government Ordinance No. 138/2000 amending and completing Civil Procedure Code (“**Law No. 219/2005**”)*

Law No. 219/2005 was published with the Official Gazette No. 609 of July 14, 2005, and entered into force as of January 1, 2006.

Law No. 219/2005 reaffirms the four-level structure of Romanian courts: First Instance Courts, Tribunals, Court of Appeals, and the High Court of Cassation and Justice. Claimants must file with Commercial Departments of Tribunals any commercial claims whose value exceeds ROL 1 billion, or commercial claims with no value.

Civil claims whose value exceeds ROL 5 billions shall be filed with Civil Department of Tribunals.

Claims not exceeding the above amounts shall be filed with competent First Instance Courts. Claims related acts issued by Romanian central authorities must be filed with the Courts of Appeal. The appeal shall be settled by the High Court of Cassation and Justice.

Law No. 219/2005 provides with rules for lawyers willing to administer parties' evidences outside of court proceedings. Such amendment was due to speed-up litigation proceedings and save parties time and costs.

### ***LABOUR LAW***

- *Law No. 371/2005 approving Emergency Government Ordinance No. 65/2005, amending and completing Law No. 53/ 2003 regarding Labour Code ( "**Law No. 371/2005** ")*.

Law No. 371/2005 was published with the Official Gazette No. 1147 of December 19, 2005. Under Law No. 371/2005, the employer must inform a new employee of the general terms of its individual labour agreement, prior to its conclusion. The employer must also inform the employee in case of amendment of its individual labour agreement.

Under Art. 9 of Law No. 371/ 2005, an individual labour agreement may include a non-competition clause. As such, the employee may be required to avoid being involved in activities competing with the activities of his former employer, in exchange of certain compensation.

### ***REAL ESTATE***

- *Law No. 247/2005 on reform of property law and justice, and additional measures ( "**Law No. 247/ 2005** ")*

Law No. 247/2005 was published with the Official Gazette No. 653 of July 22, 2005. Law No. 247/2005 is to be considered one of the most significant pieces of real estate legislation enacted by Romanian Parliament upon change of communist rule in 1989.

Under Law No. 247/2005 provisions, a significant number of laws related with property and real estate fields were amended. Amendments to fiscal and criminal legislation, or to legislation related to organization of Romanian judicial system were also adopted.

- *Law No. 312/2005 on acquiring ownership rights over real estate by foreign individuals and/or legal entities ( "**Law No. 312/2005** ")*

Law No. 312/2005 was published with the Official Gazette No. 1008 of November 14, 2005.

Law No. 312/2005 shall be effective as of January 1, 2007, upon Romania accession to the EU. In accordance with the provisions of Law No. 312/2005, individuals or legal entities of EU or Economic European Space ("**EES**") nationality shall be entitled to

acquire full ownership rights over real estate in Romania. Non-EU or non-EES nationals shall be authorized to acquire real estate in Romania based on the provisions of the international treaties concluded between Romania and such nationals' country of residence.

However, under Art. 4 of Law No. 312/2005, provided that the buyer (a EU or EES individual/legal entity) is not a resident of Romania, and provided that the real estate shall be used as a secondary residence or a secondary branch, ownership rights over such real estate could be acquired as of January 1, 2012.

Under Art. 5 of Law No. 312/2005, ownership rights over forests and agricultural land shall be available for purchase by EU or EES individuals/legal entities as of January 1, 2014.

At present, foreign individuals or legal entities, irrespective of their citizenship or nationality, may acquire ownership rights over Romanian real estate by purchasing property using as buyer a Romanian corporate vehicle. Such vehicle should be a company incorporated under Law No. 31/1990 on Romanian companies ("**Law No. 31/1990**"). The vehicle shares may be privately held (under Law No. 31/1990 provisions), or may be acquired from Romanian Stock Exchange or Romanian Over the Counter Stock Exchange, pursuant to Law No. 297/2004 on capital markets. In practice, the most common vehicle used is a privately held limited liability company, incorporated under Law No. 31/1990.

### ***TAX EVASION***

- *Law No. 241/2005 on tax evasion practices ( "**Law No. 241/2005** ")*

Law No. 241/2005 was published with the Official Gazette No. 672 of July 27, 2005.

The persons found guilty of the offences provided under Law No. 241/2005 cannot act as founders, administrators, directors or legal representatives of a Romanian company.

For acts of tax evasion amounting to a prejudice of up to EUR 100,000, in case the prejudice is fully recovered until the first court hearing of tax evasion case, the defendant may claim the court to pay a fine, instead of facing imprisonment.

**NOTE:** In connection to this newsletter, readers may address questions to its authors at [marius.petroiu@lp-legal.com](mailto:marius.petroiu@lp-legal.com), or [crisrina.voevodschi@lp-legal.com](mailto:crisrina.voevodschi@lp-legal.com), on behalf of Pachiu&Associates.

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