

Newsletter

Issue No. 71

Romanian legal developments enacted between January 1, 2006 and November 24, 2006

BANKING

- *Law No. 33/2006 on mortgage banks (“Law No. 33/2006”).*

Law No. 33/2006 was published with Official Gazette No. 200 of March 3, 2006. Law No. 33/2006 provides for rules on the establishment, organization, authorization and functioning of mortgage banks, as credit institutions defined under Law No. 58/1998 on banking, as amended.

Mortgage banks shall be established as joint stock companies, and must be authorized by the National Bank of Romania. The main object of activity of such banks shall relate to mortgage loans, real estate investments, and issuance of mortgage bonds.

- *Law No. 32/2006 on mortgage bonds (“Law No. 32/2006”).*

Law No. 32/2006 was published with Official Gazette No. 264 of March 23, 2006. Law No. 32/2006 establishes the legal framework for issuance of mortgage bonds, including rights and responsibilities of such bonds owners. The law provides with rules for re-financing commercial activities by using mortgage bonds.

REAL ESTATE

- *Law No. 34/2006 amending Law No. 190/1999 regarding the mortgage credit for real estate investments (“Law No. 34/2006”).*

Law No. 34/2006 was published with Official Gazette No. 200 of March 3, 2006. A mortgage credit for real estate investments shall be granted exclusively by authorized institutions, upon compliance with the following conditions:

- The credit was granted for the purpose of real estate investments, or for the purpose of refunding existing mortgage credits; and
- The credit is guaranteed with a mortgage over the building that represents the object of the real estate investment.

Under the law, a mortgage shall be deemed as finally settled upon final refunding of the amounts owed. A transfer of the mortgage object to a different real estate is permitted upon compliance with certain terms and conditions.

- *Law No. 223/2006 amending Law No. 16/1994 on land lease (“Law No. 223/2006”).*

Law No. 223/2006 was published with Official Gazette No. 497 of June 8, 2006. Under the law, a valid land lease agreement must be concluded in writing and must follow the standard form published as an addendum to Law No. 223/2006.

- *Law No. 376/2006 amending Law No. 50/1991 on constructions (“Law No. 376/2006”).*

Law No. 376/2006 was published with Official Gazette No. 846 of October 13, 2006. The law provides with details in case of authorizing various construction works, including demolition works.

COMPANY LAW

- *Law No. 67/2006 on protection of employees in case of total or partial transfer of a company (“Law No. 67/2006”).*

Law No. 67/2006 was published with Official Gazette No. 276 of March 28, 2006. Law No. 67/2006 was adopted based on EU Directive No. 2001/23/CE. Under Law No. 67/2006, the bidder: i) cannot claim individual or collective dismissal of target company employees based on the occurrence of a transfer; and ii) must takeover all individual and collective labor agreements concluded between the target company and its employees; and iii) may renegotiate the target company collective labor agreement after one year as of the takeover date.

Moreover, with 30 days prior to the takeover date, the bidder must inform in writing the target employees over: a) envisaged takeover date, including takeover reasons, and b) legal, economic and social consequences of the transfer, and c) the decisions made concerning the employees, and the working conditions to be provided upon takeover.

In case the takeover shall require decisions to be made in relation to a dismissal of company employees, the bidder must agree with target employees over terms of such dismissal with 30 days prior to the takeover date. Non-compliance with such provisions is fined with RON 1500 to RON 3000 (EUR 427 to EUR 854).

- *Emergency Government Ordinance No. 39/2006 amending Law No. 16/1996 on national archives (“EGO No. 39/2006”).*

EGO No. 39/2006 was published with Official Gazette No. 486 of June 5, 2006. The law provides for the Authority for State Assets Recovery (Rom. “AVAS”) with the right of taking over the archive of companies where the Romanian state owns 50%+1 of such companies share capital.

- *Romanian High Court of Cassation and Justice Decision No. 22 of June 12, 2006*

The decision was published with Official Gazette No. 936 of November 20, 2006. Under the decision, the Romanian High Court of Cassation and Justice issued guidelines for

interpretation of an applicant request to incorporate a company under Law No. 31/1990 on companies, in case such company's object of activity relates to provision of legal services.

Under such guidelines, the Romanian High Court of Cassation and Justice ruled that companies cannot have as object of activity the act of providing legal services, as such would collide with the provisions of Law No. 51/1995 on legal profession in Romania.

CONTRACTS LAW

- *Law No. 416/2006 amending Art. 4(1) of Law No. 469/2002 on enforcement of contractual discipline (“**Law No. 416/2006**”).*

Law No. 416/2006 was published with Official Gazette No. 946 of November 23, 2006. Under the law, parties may provide in a contract with clauses related to penalties per day of delay, in case of non-compliance by the other party with payment deadlines.

TAX LAW

- *Law No. 343/2006 amending Law No. 571/2003 on Fiscal Code (“**Law No. 343/2006**”).*

Law No. 343/2006 was published with Official Gazette No. 662 of August 1, 2006. Under the law, as of January 1, 2007, Romanian micro-enterprises shall be taxed as follows: i) with 2% of their turnover in 2007, ii) with 2.5% of their turnover in 2008, and iii) with 3% of their turnover in 2009. In case such micro-enterprise shall reach a yearly income of more than Euro 100,000, it shall be taxed with 16% of its income tax.

A Romanian micro-enterprise is defined as: i) a company established under Law No. 31/1990 on companies, ii) which at December 31 of the previous year obtained more than 50% of its incomes from sources other than consulting or management services; iii) has 1 to 9 employees; iv) such company incomes do not exceed Euro 100,000 per year and v) such company share capital is not owned by state or local authorities.

- *Ministry of Finance Order No. 1346/2006 on assignment of fiscal identification code for individuals working under liberal professions.*

The order was published with Official Gazette No. 744 of August 31, 2006, and applies to individuals working under liberal professions such as, for example, lawyers, notaries, architects, or accountants. The order provides with the procedure applicable for assignment of a fiscal identification code of ten digits, similar with the fiscal identification code applicable in the EU member countries.

COPYRIGHT

- *Law No. 329/2006 on approval of Emergency Government Ordinance No. 123/2005 amending Law No. 8/1996 on copyright (“Law No. 329/2006”).*

Law No. 329/2006 was published with Official Gazette No. 657 of July 31, 2006. The law provides that no copyright breach occurs in case of reproduction of a written work absent author consent, provided that: i) such reproduction occurred for personal/family use, and ii) the written work was previously acknowledged by public, and iii) the reproduction does not contravene to such work normal use nor prejudices the author.

DUTY-FREE

- *Law No. 330/2006 amending Emergency Government Ordinance No. 104/2002 on duty-free goods (“Law No. 330/2006”).*

Law No. 330/2006 was published with Official Gazette No. 631 of July 21, 2006. The law provides with details in case of commercialization of duty-free products, including for authorization of duty-free outlets.

LABOR LAW

- *Law No. 226/2006 on work under special conditions (“Law No. 226/2006”).*

Law No. 226/2006 was published with Official Gazette No. 509 of June 13, 2006. The law provides with details in case of work under special conditions, such as working under high levels of pollution or noise.

- *Emergency Government Ordinance No. 55/2006 amending Law No. 53/2003 on Labor Code (“EGO No. 55/2006”).*

EGO No. 55/2006 was published with Official Gazette No. 788 of September 18, 2006. Under the law, the act of dismissal for reasons related to the employee fault is defined. The law also defines the act of collective dismissal of employees.

Until December 31, 2008, employment duration (Rom. “vechime in munca”) shall continue to be calculated based on employees labor booklets details.

WORK PERMITS

- *Government Ordinance No. 49/2006 amending Law No. 203 on work permits (“GO No. 49/2006”).*

GO No. 49/2006 was published with Official Gazette No. 745 of August 31, 2006. Under GO No. 49/2006, the employer who managed to perform investments under Law No. 332/2001 on direct investments with significant impact to Romanian economy may

require the Romanian Immigration Authority the extension of the work permits of its employees up to 3 years.

Based on GO No. 49/2006, foreigners' member of a Romanian family may work in Romania absent a work permit.

PENAL LAW

- *Law No. 278/2006 amending the Criminal Code (“Law No. 278/2006”).*

Law No. 278/2006 was published with Official Gazette No. 601 of July 12, 2006. Under the law, legal entities may be found guilty of criminal offences, provided that a number of conditions are met. The law list the sanctions available in case of criminal liability of legal entities, including the sanction of the winding-up of a legal entity.

- *Law No. 356/2006 amending the Criminal Code (“Law No. 356/2006”).*

Law No. 356/2006 was published with Official Gazette No. 677 of August 7, 2006. The law provides for details related to criminal liability of legal entities.

- *Ministry of Justice Order No. 2184/C for approval of internal organizational chart of Anti-Corruption Department (Rom. “DNA”)*

The order was published with Official Gazette No. 852 of October 17, 2006. The order provides for the establishment of the Anti-Corruption Department (Rom. “DNA”) with the Prosecutors Office from the High Court of Cassation and Justice.

ADMINISTRATIVE LAW

- *Law No. 352/2006 on supplementing the provisions of Government Ordinance No. 2/2001 on misdemeanors (“Law No. 352/2006”).*

Law No. 352/2006 was published with Official Gazette No. 640 of July 25, 2006. Under the law, non-payment of a fine related to a misdemeanor authorizes courts to replace such sanction by community work.

- *Law No. 51/2006 on community public services (“Law No. 51/2006”).*

Law No. 51/2006 was published with Official Gazette No. 254 of March 21, 2006. Under the law, public notaries must request proof of payment of all condominium utilities prior to notarization of a condominium sale-purchase agreement.

FAMILY LAW

- *Law No. 396/2006 on financial support of families (“Law No. 396/2006”).*

Law No. 396/2006 was published with Official Gazette No. 892 of November 2, 2006. Under the law, each new family is entitled to receive Euro 200 net upon conclusion of their first marriage.

PUBLIC ACQUISITIONS

- *Public Acquisitions Authority Order No. 155/2006 on awarding public acquisitions contracts (“Order No. 155/2006”).*

Order No. 155/2006 was published with Official Gazette No. 894 of November 2, 2006. The order publishes a public acquisitions guide, listing applicable public acquisitions procedures.

SPONSORSHIP LAW

- *Law No. 394/2006 amending art. 3 of Law No. 32/1994 on sponsorship (“Law No. 394/2006”).*

Law No. 394/2006 was published with Official Gazette No. 892 of November 2, 2006. Under the law, Romanian state companies are prohibited to sponsor private entities.

NOTE: In connection to this newsletter, readers may address questions to its authors at marius.petroiu@lp-legal.com, or cristina.voevodschi@lp-legal.com, on behalf of Pachiu&Associates.

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