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## LEGAL & TAX | NEWS

### May 2010

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1.  
**Amendments of the periodical financial statements templates and of the methodological norms regarding their drawing up and use, applicable to non-banking financial institutions**

By Order No. 4 of March 19, 2010, published in the Romanian Official Gazette, Part I, No. 196/29.03.2010 (the “**Order**”), the Romanian National Bank (“**NBR**”) modified the periodical financial statements’ templates and the methodological norms regarding their drawing up and use, applicable to non-banking financial institutions, approved by NBR’s Order no. 18 of November 30, 2007. The Order is applicable starting with the periodical financial statements drawn up for the date of March 31, 2010, except for the provisions regarding the modification of the term for submitting to NBR the financial statements drawn up by the financial institutions and the statements of those who have not performed any activity as from their incorporation until the end of the reporting period, as well as for the related provisions.

The main modifications brought by the Annex to the Order are the following:

- All the references to provisions for depreciation contained by Order No. 18/2007 shall be read as references to adjustments for depreciation, and the references to RON shall be read as references to lei.
- When drawing up the periodical financial statements, the non-banking financial institutions shall take into account the provisions of the Accounting Regulations corresponding to European directives applicable to credit institutions, non-banking financial institutions and the Deposit Guarantee Fund in the banks systems, approved by NBR’s Order No. 13/2008 instead of the ones approved by Order No. 5/2005.
- The term for submitting the financial statements drawn up by the non-banking financial institutions and the term for submitting the statements of the ones who have not performed any activity as from their incorporation until the end of the reporting period, of 150 days from the closure of the financial exercise for which the statements were drawn up, was replaced with the term for submitting to NBR the financial statements to be published, provided by the Accounting Regulations corresponding to European directives, applicable

to credit institutions, non-banking financial institutions and the Deposit Guarantee Fund in the banks systems, approved by Order no. 13/2008, which, at present, is of 130 days from the closure of the financial exercise for companies. Within the same period of time, the financial statements will also be retransmitted to NBR if the information presented by the semiannual or quarter financial statements, drawn-up for the end of the financial exercise, are recording modifications between the financial exercise closing date and the date of approving the yearly financial statements.

- It is specified that, within the mentions regarding the activity indexes, fraud reporting at the date of discovery coincides with the date of registration into the accounting documents, notwithstanding if at that time the author of the fraud had been identified or not. Also, for classifying frauds into “internal frauds” and “external frauds”, the provisions of Annex 3 “Classifying loss events” of the NBR and Romanian National Securities Commission’s Regulation No. 24/29/2006 regarding the establishment of the minimal capital requirements of the credit institutions and of the investment companies for operational risk, approved by NBR and Romanian National Securities Commission’s Order No. 21/118/2006, should be taken into consideration. Thus, for this purpose the NBR’s Norm No. 17/2003 regarding the organizing and internal control of the credit institutions activity and the significant risks management, as well as the organizing and performing of credit institutions internal audit activity will not be taken into consideration anymore.
- It is also clarified that, within the mentions regarding the activity indexes, the entire value of the credits included in “The balance of the credits affected by payment delays” includes the value of the current part registered at positions 102-150 and 350 from the form 5000 “Patrimony situation”, as well as of the outstanding part registered at positions 185 and 360 from the form 5000, and also the fact that it is registered if there are delay payments, as principal or as interest. This index will contain the values for each agreement and not for each client. The debts resulting from VAT and various services resulted from the financial lease agreements’ performance will not affect the index “The balance of the credits affected by payment delays”.



2.  
**The reference interest  
rate of the National  
Bank of Romania  
available for April  
2010**

In the Official Gazette of Romania, Part I, No. 205 of April 1, 2010 was published the National Bank of Romania's Circular No. 10/01.04.2010 regarding the reference interest rate for April 2010 (the „**Circular**”).

According to the Circular, the National Bank of Romania's reference interest rate for April 2010 is of 7% per year.

1.  
**The modification of  
the Government  
Ordinance no. 58/1998  
regarding the  
organization and  
performance of  
tourism activity in**

The emergency ordinance no. 25/2010 (the „**Emergency Ordinance**”) was published in the Official Gazette, part I, no. 211/ April 2, 2010.

The Emergency Ordinance provides that the homologation of the sky paths and lines and of touristic paths shall be done by the Ministry of Regional Development and Tourism and shall be also approved by government decision.

Also, using beaches for touristic purposes shall be performed by economic operators holding a touristic authorization issued according to the methodological norms approved by order of the minister of regional development and tourism.

The Emergency Ordinance also stipulates the necessity that a tourism agency or a welcoming tourism structure shall be coordinated by a private individual holding a tourism diploma, a graduation certificate of a tourism management course organized by an authorized course supplier, or a bachelor/master/doctoral degree diploma, in the tourism field.

The Emergency Ordinance also provides that the tourism economic agents shall run their business with personnel trained according to the methodological norms approved by order of the minister of regional development and tourism.

The Emergency Ordinance entered into force on April 2, 2010.



2.  
**Freedom of  
establishment and  
freedom to provide  
services in Romania**

Law 68 (the „**Law**”) approving the Government Emergency Ordinance no. 49/2009 regarding the services providers’ freedom of establishment and freedom to provide services in Romania (the „Ordinance”) was published in the Official Journal Part I no. 256 of April 20, 2010. The Law entered into force as of April 23, 2010.

The Law states that the Ordinance does not envisage the liberalization of general economic interest services, reserved for public or private bodies, the privatization of public bodies providing services and the elimination of monopolies which provide services.

It is further mentioned that the Ordinance provisions are not applicable to non-economic services of general interest.

The Law introduces the competent authorities’ obligation to examine and simplify the procedures and formalities which regulate the access to services activities and their performance. The community level harmonized forms represent the equivalent of the certificates, attestations and any other documents requested from a provider.

The Law sets December 1<sup>st</sup>, 2010 as the date by which the Unique Electronic Contact Point which ensures the providers’ possibility to fulfill a series of procedures related to services provision in Romania will become operational and appoints the National Center “Digital Romania” (“**CNDR**”), subordinated to the Ministry of Communication and Informational Society, as authority in charge of setting up the Unique Electronic Contact Point, making it operational and administrating it.

The elimination of total restrictions on commercial communications pertaining to regulated professions is expressly stipulated. Such professions will observe the professional norms of the respective professions. Nevertheless, the professional norms regarding commercial communications must be non-discriminatory, justified by a general interest imperative ground and adequate.

A new contravention is provided. Such contravention consists in the failure to register the competent authorities with the system of Unique Electronic Contact Point within maximum 30 days as of the date it becomes operational. to be ascertained and sanctioned by CNDR.

The Ordinance introduces:

- the competent authorities' obligation of accepting any document submitted by the provider or beneficiary upon authority's request, issued in a Member State, which is the equivalent or which provides sufficiency with regard to the fulfillment of the verified requirement; and
- the competent authorities' interdiction of requesting the submission of a document issued in another Member State, in original version, in copy certified for conformity or certified translation.


## EMPLOYMENT AND PENSIONS



2.  
**Template of the grant related financing agreement for the sectorial operational program “Development of Human Resources 2007-2013”**

Order no. 157 of the Ministry of Labour, Family and Social Protection regarding the approval of the template of the grant related Financing Agreement for the Sectorial Operational Program “Development of Human Resources 2007-2010” (the “**Order**”) has been published in the Official Gazette, Part I no. 208 of April 1<sup>st</sup>, 2010. The Order entered into force on April 1<sup>st</sup>, 2010.

According to the Order, the template of the grant related Financing Agreement for the Sectorial Operational Program “Development of Human Resources 2007-2010”, included in the annex of the Order, has been approved. The annex shall be published in the Official Gazette, Part I no. 208 bis.



1.  
**Control regarding the presence of the temporary work incapacitated insured persons at the domicile or at other indicated residence**

Government Emergency Ordinance no. 36 (“**Ordinance 36**”) regarding the amendment of Government Emergency Ordinance no. 158/2003 regarding the health social insurance related leaves and indemnities (“**Ordinance 158**”) has been published in the Official Gazette, Part I no. 268 of April 26, 2010. The Order entered into force on April 26, 2010.

The main amendment brought by Ordinance 36 to Ordinance 158 consists in the insertion of the obligation of the temporary work incapacitated insured persons to be present at their domicile or at the indicated residence during the recovery, as well as of the possibility of the payers of health social insurance indemnities, i.e. the employers and the National Fund for health social insurances, to verify the presence of the temporary work incapacitated insured persons at their domicile or at the indicated residence. For the purpose of such verification, the payers of health social insurance indemnities may be accompanied by a policeman.

The verification of the insured persons at their domicile or at the indicated residence will not breach their rights and freedoms.

In case the temporary work incapacitated insured person refuses the above mentioned verification, the payment of the indemnities is ceased on the refusal date. The infringement of the obligation to be present at the domicile or at the indicated residence by the temporary work incapacitated insured person leads to the cease of indemnity payment starting the date when the infringement is acknowledged.

The rules regarding the verification of the insured persons' presence at the domicile or at the indicated residence shall be established in the Methodology to be approved by common order of the Health Minister, Minister of Administration and the Interior and President of the National Health Insurance Authority within 10 days, starting the entrance into force of Ordinance 36.

## ENVIRONMENT &amp; ENERGY

1.  
**Measures for the efficient management of the excess of Romania's assigned amount units pursuant to the Kyoto Protocol**

The Government Emergency Ordinance no. 29/2010 ("**GEO**") regarding the management of the excess of Romania's assigned amount units pursuant to the Kyoto Protocol has been published in the Official Gazette Part I, no. 231 on April 13, 2010.

GEO establishes measures for an efficient management of the excess of Romania's assigned amount units ("**AAU**") pursuant to the Kyoto Protocol within the green investment schemes during the commitment period 2008 -2012. The excess of AAUs is to be traded by the states mentioned in annex B to the Kyoto Protocol and the resulting incomes are to be used for financing projects which generate the reduction of greenhouse gas emissions.


Trading of the excess of AAUs is performed by transferring the ownership right over Romania's excess of AAUs to another contracting state or to the state which has authorised another contracting entity which does not have the capacity as international legal entity. The transfer of ownership is performed by registration into the National Registry of greenhouse gas emissions of the contracting state or of the state that authorised the contracting entity.

Trading is performed through direct negotiation where the essential criterion for the conclusion of the agreement related to the transfer of the excess of AAUs is the most advantageous offer from an economic standpoint.

The amounts resulting from the trading of the excess of AAUs are to be used for the financing of projects which generate the reduction of greenhouse gas emissions and shall be transferred to the Environment Fund, except for 10% of the transfer value of each transaction which shall be transferred to the state budget.

Within 15 days from the entering into force of the Ordinance, the initiation and development of certain green investment schemes shall be approved through Government decision.

The Ordinance entered into force on April 13, 2010.



2.  
**Finance for investments in the extension and modernisation of the transportation networks of electricity, natural gas and petroleum, as well as in the distribution networks**

The joint order no. 392/2010 (the “**Order**”) of the Ministry of Economy, Trade and Business Environment and of the Ministry for Public Finances regarding the approval of the List of eligible expenses for projects financed within the Sector Operation Programme “The increase of economic competitiveness” (“**POS CEE**”) 2007 – 2013, major axis 4 “The increase of energetic efficiency and of the supply security in the context of fighting climatic changes”, major domain for intervention 1 “Efficient and sound energy (improvement of energetic efficiency and the sound development of the energetic system from an environment standpoint)”, operation “Supporting investments in the extension and modernisation of transportation networks of electricity, natural gas and petroleum, as well as in the distribution networks of electricity and natural gas, in order to reduce the network losses and to perform, in conditions of security and continuity, the transportation and distribution service” – distribution part, has been published in the Official Gazette Part I, no. 246 on April 16, 2010.

The list of eligible expenses is included in the annex which is an integral part of the Order.

In order to consider the expenses stipulated in the annex to the Order as eligible for financing purposes, they have to be incurred only further to the obtaining by the beneficiary of a written confirmation from the intermediary structure for energy (the “**Confirmation**”) stating that the eligibility requirements stipulated in the State aid scheme “Support for investments in the extension and modernisation of distribution networks of electricity and natural gas” are met.

By way of exception, the expenses regarding land acquisition and preliminary feasibility studies are eligible provided that they are incurred after the entering into force of the State aid scheme.

The following expenses are not eligible:

- Expenses related to the acquisition through leasing;

- Expenses incurred under ones' own administration (in Romanian: *in regie proprie*) regarding projects financed under POS CCE, major axis 4, operation "Supporting investments in the extension and modernisation of distribution networks of electricity and natural gas, as well as in the distribution networks of electricity and natural gas, in order to reduce the network losses and to perform, in conditions of security and continuity, the transportation and distribution service" – distribution part;
- Expenses as in kind contributions.

The Order entered into force on April 16, 2010. The applications for finance can be submitted starting with April 22, 2010 until July 22, 2010.

3.  
**Approval of the methodology for evaluation of the impact on the environment of public and private projects**

Order no. 135/76/84/1284 / 2010 (the "**Order**") of the Minister of Environment and Forests, the Minister of Administration and Internal Affairs, the Minister of Agriculture and Rural Development and the Minister of Regional Development and Tourism regarding the approval of the Methodology for evaluation of the impact on the environment of public and private projects, has been published in the Official Gazette Part I, no. 274 on April 27, 2010.

The Methodology establishes the necessary steps for undertaking the procedure of evaluating the impact on the environment for public and private projects and integrates, as the case may be, the specific requirements related to the adequate evaluation of the potential effects of such projects on the protected natural areas of European Community interest.

The evaluation of the impact on the environment and the adequate evaluation are performed through the agency of a technique analysis committee ("**CAT**").

The evaluation of the impact on the environment has to be performed prior to the commencement of the construction works or the accomplishment of the projects.

The competency for undertaking the steps for evaluating the impact on the environment is that of the county agencies, regional agencies, the National Agency for Environment Protection, the Administration Danube Delta Biosphere Reserve or the central public authority for environment protection depending on the location of the project site.

The procedure for evaluating the impact on the environment includes, mainly, the following steps:

- The submission by the project holder of a notification regarding the intent of accomplishing the project, along with a zoning certificate and the proof attesting the payment of the tax related to this step;
- The competent authority for environment protection decides, based on the notification and on the documents attached thereto, to close the notification, to reject the notification or to undertake the procedure for evaluating the impact on the environment or of the adequate evaluation, in a 10 days term as of the receipt of the notification;

- In case the competent authority for environment protection decides upon the necessity of undertaking the procedure for evaluating the impact on the environment or the adequate evaluation procedure, the project holder shall submit a presentation memoir;
- Based on the memoir and on the standpoints expressed by the CAT and the project holder, the competent authority for environment protection decides upon the integration of the project in a certain stage and upon the performance of the evaluation depending on the type of the submitted project, justifying its decision accordingly, in term of 15 days from the submission of the presentation memoir;
- In term of 10 days from the communication of the decision related to the project stage integration, the competent authority for environment protection shall proceed to the stage of defining the evaluation subject, and shall deliver to the project holder and to the interested public, the guidelines regarding the environment issues which have to be analysed within the report related to the impact on the environment and in the adequate evaluation survey;
- Based on such guidelines, the project holder shall submit to the competent authority for environment protection, the report regarding the impact on the environment, the security report or the adequate evaluation survey, as the case may be;
- In term of 5 days after receiving the aforementioned documents, the competent authority shall establish, as commonly agreed with the project holder, the opportunity for the public to participate to the decision making process regarding the project, indicating the date and the hour of the public debate;
- In term of 20 days from the public debate meeting, the competent authority for environment protection shall communicate to the project holder the standard form for the presentation of the solution to the issues raised by the interested public and shall request that such form be filled in with solutions to the recorded issues;

- Based on the responses received from the project holder and following the analysis of such responses together with CAT, the competent authority for environment protection shall decide either to issue the environmental permit, either to reject the request, taking into consideration also the European Commission's point of view, as the case may be.

The competent authority for environment protection may grant exemptions from the procedure of evaluating the impact on the environment, at the request of the project holder. The exemption decision is communicated to the European Committee.

The procedure for adequate evaluation includes, mainly, the following steps:

- The competent authority for environment protection shall decide, in term of 10 days from the receipt of the notification of the project holder, the necessity of undertaking the adequate evaluation procedure;
- In term of 15 days from the submission of the presentation memoir, the competent authority for environment protection shall make a decision regarding the qualification of the project for a certain stage and decides whether the project has to undertake the other steps of the adequate evaluation procedure, depending on the projects' significant or insignificant impact on the integrity of the protected natural areas of European Community interest;
- In term of 15 days from the submission of the adequate evaluation survey, the competent authority for environment protection shall decide either to undertake the alternative solutions stage, either to issue the Nature 2000 permit, depending on the analysis with regard to the negative impact of the project;
- In case the competent authority for environment protection shall decide to undertake the alternative solutions stage, in term of 15 days from the completion of the adequate evaluation survey with the alternative solutions, the competent authority for environment protection may decide either to undertake the compensatory measures stage, either to issue the Nature 2000 permit, either to reject the request;

- In case the authority shall decide to undertake compensatory measures at this stage, in term of 15 days from the completion of the adequate evaluation survey stipulating compensatory measures, the competent authority for environment protection may decide to issue the Nature 2000 permit or to reject the request, taking into consideration also CAT points of view.

Any amendment or extension of the project occurring after the issuance of the decision regarding the qualification of the project for a certain stage has to be notified to the competent authority for environment protection prior to the issuance of the development approval.

As of the Order's entry into force, the Order of the Minister of Waters and Environment Protection no. 860/2002 regarding the approval of the Procedure for the evaluation of the impact on the environment and for the issuance of the environmental permit shall be repealed.

The Order entered into force on April 27, 2010.

1.  
**Draft of the annual  
balance sheets and of  
the annual financial  
situations**

Order no. 864 of the Ministry of Public Finances regarding several issues regarding the draft of the annual balance sheets and of the annual financial situations ("**Order**") was published in the Official Gazette, part I, no. 229 of April 12, 2010. The Order came into force as of April 12, 2010.

The Order approves the annual reporting system as of December 31<sup>st</sup>, 2009, for the entities which opted for a financial exercise different from the calendar year and applied in the year 2009 the Accounting Regulation according to the IV Directive of the European Communities.

The main obligations stipulated by the Order for the aforementioned entities are the following:

- To draft and submit the annual reports as of December 31<sup>st</sup>, 2009 with the territorial units of the Ministry of Public Finances.
- To inform in written the territorial unit of the Ministry of Public Finances regarding the chosen financial exercise, at least 30 days prior to its application. The entities which opt for a financial exercise different from the calendar year prior to the coming into force of the Order, shall inform in written the territorial unit of the Ministry of Public Finances regarding the selected financial exercise, within 30 calendar days from the publication of the Order in the Official Gazette.
- To draft the annual financial situations which have to be filed with the Trade Register Office on the termination date of the financial exercise chosen for the first financial exercise which ended on a different date than the end of the calendar year. The financial situations shall cover 12 months, namely 365 days, except for the entities established during the reporting year. Also, the last column of the balance sheet, respectively of the profit and loss account, shall contain only information corresponding to a date or reporting period latter to January 1<sup>st</sup>, 2010.
- To compute and declare the fiscal obligations according to the relevant legislation.

According to the Order, the exchange rate used for the evaluation of the monetary elements in foreign currency on December 31<sup>st</sup>, 2009 shall be the exchange rate communicated by the Romanian National Bank for December 31<sup>st</sup>, 2009 (e.g. RON/EUR 4.2282).

The exchange rate for the monthly evaluation starting January 1, 2010 shall be the exchange rate communicated by the Romanian National Bank for the last banking day of the month in which the evaluation takes place.

The Order shall apply starting with the annual reporting for December 31<sup>st</sup>, 2009.



3.  
**Interest rate for loans  
in foreign currency**

Government Decision No. 296 regarding the amendment of item 70<sup>1</sup> of the Methodological Norms to the Fiscal Code, approved by Government Decision No. 44/2004 (the "**Decision**") was published in the Official Gazette, Part I no. 239 of April 15, 2010. The Decision entered into force on April 15, 2010.

According to the Decision for the computation of the taxable profit starting fiscal year 2010, the interest rate for loans in foreign currency is of 6%.

3.

**Law on fiscal-  
budgetary  
responsibility**

Law no. 69 on fiscal-budgetary responsibility (the „Law”) was published in the Official Journal Part I no. 252 of April 20, 2010. The Law entered into force as of April 23, 2010.

The provisions of Law are applicable to authorities, public institutions, public entities and/or public utility entities, as well as to other entities which are financed in a quota of more than 50% of public funds, as set according to the European norms.

The Law sets the basic principles based on which the Romanian Government will define and apply the fiscal-budgetary policy which consists in the principles of transparency, stability, fiscal responsibility, equity, efficiency as well as the principle of efficient administration of personnel expenses financed from public funds.

The Law also sets the objectives of the fiscal-budgetary policy, such as: (i) attaining a close to zero balance for the general consolidate budget during the economic cycle, while ensuring the country competitiveness; (ii) ensuring the predictability of the level of taxes and charges and of the basis on which they are computed.

The Law sets the rules of the fiscal-budgetary policy, introducing a series of restrictions with regard to the modification of the balance and expenses pertaining to the general consolidated budget.

The Law provides the basis for the establishment of a new institution, namely the Fiscal Council, an independent authority comprising a number of 5 members experienced in the field of macroeconomic and budgetary, who will support the Government and Parliament activity with regard to the process of preparation and application of fiscal-budgetary policies. The main attributions of the Fiscal Council refer to opinions, prognosis, analyses and recommendations. The Council will elaborate and publish an annual report comprising an analysis of the application of the fiscal-budgetary policy for the previous year, compared to the policy approved through the fiscal-budgetary strategy and annual budget.

The Law expressly forbids the promoting of normative acts deriving in the increase of personnel expenses and retirement pensions in the budgetary sector, within less than 180 days prior to the expiry of Government mandate.

Restrictive conditions have been introduced with regard to the increase of personnel expenses above the limit set in the annual budget of the main credit release authorities, such as: the prior reduction of variable salary rights and of the optional salary rights not compulsory to be granted, attainment of personnel costs reduction within the next trimester, in the same amount by which the previous trimester limit was increased, inclusively by reduction of positions and their corresponding budgets and layoffs.

The Law sets the limit of maxim two budgetary rectifications which may be approved in one year and forbids the performance of such rectifications within the first six months of the year.


According to the Law, until May 30 of each year, the Government, following the proposal of the Ministry of Public Finance, will approve the fiscal-budgetary strategy for the next 3 years and will submit for the Parliament's vote the project of the law on the approval of the limits sets within the fiscal-budgetary framework, part of the fiscal-budgetary strategy, which comprises limits/estimated results for the following years/the current year, as well as results attained in the previous years.

The fiscal-budgetary framework pertaining to the fiscal-budgetary strategy mentioned above may be amended in the following cases: modification of the financing sources of the general consolidated budget; significant comedown of the macroeconomic indicators prognosis and of the other premises taken into consideration when preparing the fiscal-budgetary strategy, as well as the change of Government.

The Law expressly forbids the pre-allocation of budgetary amounts with special destination towards certain main credit release authorities or towards specific sectors, prior to the approval of the annual budgetary project.

With regard to the transparency of the fiscal-budgetary policy, the Law introduces the Ministry of Public Finance obligation to perform a series of publications on its website with regard to: trimester financial programming of expenses, semester report on the economic and budgetary standing, the report on the execution of the previously closed budgetary year. In addition, the Government will publish on its website the report on the economic and budgetary standing at the end of its mandate.

The Law sets several contraventions in relation to the infringement of its provisions, sanctioned with fines ranging between RON 2,000 (approximately EUR 490) and RON 20,000 (approximately EUR 4,900) and the reimbursement of the damages produced.



#### 4. Amendment of the fiscal procedure code

Government Emergency Ordinance no. 39 (the "Ordinance") regarding the amendment of the Government Ordinance no. 93/2003 regarding the Fiscal Procedure Code (the "Fiscal Procedure Code") was published in the Official Gazette no. 278, on April 28<sup>th</sup>, 2010.

The Ordinance brings a series of amendments to the Fiscal Procedure Code. The following amendments shall come into force as of April 28<sup>th</sup>, 2010:

- The Fiscal Procedures Commission no longer exists and its attributions are taken over by the Central Fiscal Commission.
- The fiscal authorities shall use indirect methods for computing the taxpayer's fiscal obligations in case his accounting or fiscal documents are incorrect, incomplete, false or are not provided to the aforementioned authorities.
- The limit for challenging the tax return decisions which are resolved by the General Direction within the National Fiscal Administration Agency was increased from RON 1,000,000 to RON 3,000,000.

The following amendments brought by the Ordinance shall come into force starting July 1<sup>st</sup>, 2010:

- In case the taxpayer fails to observe the payment term, such taxpayer owes to the fiscal authorities both delay interests and delay penalties.
- The level of the delay interest shall be of 0.05% for each day of delay, as opposed to the current level of 0.1% for each day of delay of the delay penalties.

- The taxpayer also owes delay penalties which are computed as follows:
  - In case the debt is paid within the first 30 days starting its due date, no delay penalty is owed.
  - In case the debt is paid within the next 60 days, the taxpayer shall owe a penalty of 5% from the main extinguished debt.
  - In case the debt is not paid within the aforementioned term, the taxpayer shall owe a penalty of 15% from the main due debt.
- The obligation to pay the delay interest does not eliminate the obligation to pay delay penalties.
- In case the amount owed to the local budgets is not paid in due time, the taxpayer shall owe delay penalties of 2% from the main unpaid amount, for each month or fraction of a month.

1.  
**Law no. 66 of  
31.03.2010 on the  
amendment and  
completion of the Law  
no. 84/1998 on trade  
marks and  
geographical  
indications**

On 09.04.2010 Law no. 66 of 31.03.2010 on the amendment and completion of the law no. 84/1998 on trade marks and geographical indications was published in the Official Gazette of Romania no. 226, part I (the „**Law**”).

The Law transposes the provisions of Directive 2008/95/CE of the European Parliament and of the Council of 22.10.2008 to approximate the laws of the Member States relating to trade marks<sup>1</sup> (the „Directive”) and it regulates the status of community trade marks in Romania on grounds of the Council Regulation no. 270/2009 on the community trade mark<sup>2</sup> (the „Community Trade Mark Regulation”).

The definition of the „trade mark” is amended and completed by way of introducing new signs capable of being registered as trade marks, such as: colors, holograms, sounds.

In addition, the Law includes the definition of the “community trade mark”, as set forth under the Community Trade Mark Regulation.

New absolute grounds for refusal of registration have been inserted, as follows: trade marks covering signs of high symbolic value, in particular, a religious symbol; trade marks including badges, emblems and escutcheons, other than those provided for under article 6<sup>ter</sup> of Paris Convention without the competent authority’s consent.

Among the newly inserted relative grounds for refusal it is worth being mentioned the followings:

- rights to signs not registered as trade marks provided that: (i) they have been used in the course of trade prior to the date of application for registration of the subsequent trade mark and (ii) and they confer on their proprietor the right to prohibit the use of a subsequent trade mark;
- the trade mark is liable to be confused with a mark which was in use abroad on the filling date of the application and which is still in use there, provided that at the date of the application, the applicant was acting in bad faith;

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<sup>1</sup> Published in J.O. L 299/08.11.2008.

<sup>2</sup> Published in J.O. L 78/1/24.03.2009.

- the trade mark is identical with, or similar to, an earlier collective trade mark conferring a right which expired within a period of maximum three years preceding the application;
- the trade mark is identical with, or similar to, an earlier certification trade mark conferring a right which expired within a period of maximum ten years preceding the application;
- the trade mark is identical with, or similar to, an earlier trade mark which was registered for identical or similar goods or services and conferred on them a right which has expired for failure to renew within a period of maximum two years preceding the application, unless the proprietor of the earlier trade mark gave his agreement for the registration of the latter mark and used the respective trade mark.

Another novelty brought by the Law is the possibility of filling the application by way of electronic means.

Representation through a professional representative (*i.e.* industrial property counsel) in all proceedings before the State Office for Inventions and Trade Marks ("OSIM") is mandatory for natural or legal persons not having either domicile or their principal place of business or a real and effective industrial or commercial establishment in the Community or the European Economic Area, except for filing the application for a Community trade mark.

The examination procedure of trade mark registration applications has been modified by the Law, inclusively by cutting the time limits as follows:

- the application is published in electronic format within a period of 7 days as of the filling date;
- any interested person may submit observations on absolute grounds of refusal within a period of 2 months as of the publishing of the application;
- any interested person may submit oppositions on relative grounds of refusal within a period of 2 months as of the publishing of the application. The proprietor of a trade mark who has given notice of opposition must, if the applicant so requests, furnish proof that: (i) the trade mark has been put to genuine use in Romania, in connection with the goods or services in respect of which it is registered, within a period of 5 years preceding the publication date of the trade mark against which the opposition is directed or that (ii) there are proper reasons for non-use of the trade mark against which the opposition is directed;

- the applicant may submit a standpoint regarding the opposition within a period of 30 days as of its receipt;
- the Law introduces explicit provisions on the suspension of the opposition proceedings where the opposition is based upon: (i) an application in which case the suspension lasts until its registration, (ii) a trade mark which is subject to a revocation or an invalidity claim, until the decision has become final;
- the time limit within which the OSIM must issue a decision of admission or rejection of an application is 6 months from its' publication;
- the Law set forth the possibility of processing an application under an expedite procedure, namely within 3 months as of publication, subject to payment of an additional fee, representing the double amount of the registration and examination fees;
- for the first time it is laid down a sanction for OSIM applicable in case the authority does not observe the time limits for processing an application, that being refunding of the fees;
- as soon as a decision to register a trade mark has been reached, OSIM will enter the respective trade mark into the Trade marks Register.

With respect to the renewal of a trade mark, the Law set out the following amendments:

- the time limit for publication of a renewal request has been cut down from 6 to 3 months, as of the filling date;
- the issuance of a certificate of renewal of the trade mark registration.

The Law clearly states the prohibition of extending the list of goods and services during the protection granted to a trade mark.

The Law extends the exclusive rights conferred on the trade mark proprietor by entitling him to prohibit putting in free movement or under customs suspensive or economic regime, as well as granting any other customs purpose, as provided by customs legislation, of goods bearing signs which infringe his right on the trade mark.

Considering the membership of Romania to the internal market, the Law extends the application of the principle of trade mark rights exhaustion, meaning the restraint of a proprietor to prohibit the trade mark's use in relation to goods which have been put on the market under that trade mark by the proprietor himself or with his consent, to the territory of the European Union or the European Economic Area.

The Law explicitly set forth that the registration of the transfer of a litigious right on a trade mark is suspended until the judgment has become final.

If there are sound grounds to consider that the public shall be misled as to the nature, quality or geographical origin of the goods or services for which the trade mark was registered, OSIM may refuse to register the transfer of the right to the respective trade mark. Nevertheless, if the beneficiary of the transfer agrees to limit it to the goods or services for which the trade mark is not misleading, OSIM shall register the trade mark only for those specific goods or services.

The Law changes the moment when the assignment or license of a right to a trade mark becomes opposable to third parties, which is the publication in the Official Industrial Property Bulletin („BOPI”) and not the registration date in the Trade marks Register, as it is now.

It is clearly stated that the registration of a license in the Trade marks Register is not a condition so that the use of a trade mark by the license beneficiary may be considered equivalent to a genuine act of use by its' proprietor regarding the procedures of acquiring, maintaining or defending rights to the trade mark.

With respect to geographical indications, the Law establishes a time limit of 3 months, following the submission of the application, within which OSIM is held to examine it. As in case of trade marks, interested third parties may give notice of opposition within a 2 month period as of its publication.

The Law brings clarifications in regard to the persons who can lodge contestations against OSIM decisions on registration applications of trade marks or geographical indications. Such right belongs to “any person showing a legal interest”. Moreover, the time limit within which the contestation can be submitted has been reduced from 3 months to 30 days, starting from the communication or publication date, as the case may be. Within the same time limit contestations on OSIM decisions regarding registrations of assignment or licenses of trade marks in the Trade Marks Register can also be challenged.

Based on the Law, OSIM may revoke its own decisions in case of material error related to the registration of a trade mark, renewal of the registration or to entering of an alteration in the Trade marks Register. The revocation must be done within 2 months as of date when the error was made and is subject to publication in BOPI.

According to the Law, the time limit within which the decision of the contestation Commission can be challenged before the Bucharest Courthouse is cut from 30 to 15 days as of its communication. Additionally, the time limit within which the decisions of the Bucharest Courthouse regarding claims of counterfeit, invalidity or annulment of individual, collective or certification trade marks can be appealed before the Bucharest Appeal Court has been reduced from 30 to 15 days.

The Law introduces the obligation of summoning the trade mark proprietors in all litigations regarding the trade marks.

The penal fine provided in case of offenses of trade mark infringement has been increased from 15 mill. ROL (1,500 RON) to 50,000 RON – 150,000 RON.

In case of offenses of counterfeit performed by organized criminal groups or which are able to endanger the consumers safety or health, the applicable sanction is imprisonment between 1 and 5 years and the prohibition of certain rights.

In the section dedicated to infringement of rights to a trade mark or geographical indication, the Law inserts the definition of “counterfeit” and of the action of “putting on the market”.

The applications for trade marks and geographical indications which are currently under the examination with OSIM will follow the procedures provided for by the Law.

The Law introduces several rules regarding the protection of community trade marks in Romania, such as:

- the application for registration of a community trade mark can also be filled with OSIM, which shall further forward it to the Office for Harmonization of the Internal Market, the competent authority to decide upon the application for the community trade mark.
- the proprietor of an earlier trade mark registered in Romania or of an earlier trade mark subject to an international registration with effects in Romania, who files an application to register an identical trade mark as a community trade mark for goods and services which are identical or contained within those for which the earlier trade mark has been registered, shall enjoy the seniority of the earlier trade mark regarding the registration of the community trade mark in Romania.
- the Romanian court competent to settle litigations on community trade marks in first instance is the Bucharest Courthouse.
- The Law entered into effect on May 10, 2010.



2.

**ORDA Decision no. 176 / 30.03.2010 on the establishment of commissions for the negotiation of the methodologies regarding public communication of musical works and phonograms by retailers**

On April 9, 2010 the Decision of the Romanian Copyright Office no. 176 as of March 30, 2010 was published in the Official Gazette of Romania no. 223, Part I (the „**Decision**”). By way of this Decision the commissions which are to negotiate the methodologies for the public communication of musical works for ambiental purpose and phonograms in large stores with continuous activities like malls, supermarkets, hypermarkets, commercial galleries.

Negotiations of the aforesaid methodologies should take place within the next 30 days following the establishment of the respective commissions.

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