

June 2008

## Commercial Law

### 1 Performance of the payment obligations resulting from commercial agreements

Name of the enactment	Law No. 118/2008 for the approval of Government Emergency Ordinance No. 119/2007 on the measures for fighting against the delay in the performance of the payment obligations resulting from commercial agreements (“ <b>Law No. 118/2008</b> ”)
Publication	Official Gazette of Romania, Part I, No. 410/02.06.2008
Entry into force	5 June 2008
Main provisions	<p>G.E.O. No. 119/2007 applies to commercial contracts concluded among traders or between them and a contracting authority, having as object supplying of goods or providing of services for a price consisting in an amount of money.</p> <p>Law No. 118/2008 approves with amendments G.E.O. No. 119/2007.</p> <p>The main amendments brought by Law 118/2007 are:</p> <ul style="list-style-type: none"><li>• the definition of “contracting authority” is reworded from the version before the amendment and is completed with the following two new hypotheses:</li><li>• “[...]”</li><li>• <i>d) any public enterprise which carries out one or more of the activities provided under chapter VIII section 1 of Government Emergency Ordinance No. 34/2006 on awarding public procurement agreements, public works concession agreements and service concession agreements, approved with amendments and completions by Law No. 337/2006, as further amended and completed, when it awards public procurement agreements or concludes framework agreements meant for the performance of said activities;</i></li><li>• <i>e) any entity, other than those provided under letters a)-d) [the previous hypotheses, our observation], which carries out one or more of the activities provided under chapter VIII section 1 of Government Emergency Ordinance No. 34/2006, approved with amendments and completions by Law No. 337/2006, as further amended and completed,</i></li></ul>

*further to a special or exclusive right, as defined under Article 3 letter k) of the abovementioned ordinance, granted by a competent authority, when it awards public procurement agreements or concludes framework agreements meant for the performance of said activities.”*

- it establishes the special competence of administrative claims courts to rule on the claims concerning the payment receivable resulting from a public acquisition agreement, a public works concession agreement or a service concession agreement;
- it establishes the 10 days’ term after the communication of the payment order during which such order can be challenged by a debtor through a cancellation request;
- it specifies that the cancellation request is dealt with by the court competent for ruling on the merits of the case in the first instance (in the version prior to the amendment, such request had been dealt with by the court which issued the order for payment).

Author

[maxim.dogoter@tuca.ro](mailto:maxim.dogoter@tuca.ro)

## 2 Economic-financial measures for state companies

Name of the enactment

Emergency Ordinance No. 79/2008 of 18 June 2008 on economic-financial measures for certain business entities (“**G.E.O. No. 79/2008**”)

Publication

Official Gazette of Romania, Part I, No. 465/23.06.2008

Entry into force

23 June 2008

Connections with other enactments

Company Law No. 31/1990, republished, as further amended and completed (“**Law No. 31/1990**”)

Main provisions

G.E.O. No. 79/2008 have been passed in order to meet the necessity of removing the unjustified possibility of operating in parallel two systems of managing business entities, the first one applicable to companies, established by Law No. 31/1990, according to which the executive management is delegated to managers who exercise their prerogatives based on a mandate agreement, and the second one, applicable to *regies autonome*, national companies and enterprises, as well as companies in which the state or an administrative authority is a majority shareholder established by G.E.O. No. 79/2001 on the strengthening of economic-financial discipline and other financial provisions, according to which the management powers are exercised by managers based on a performance

agreement attached to the individual employment agreement.

G.E.O. No. 79/2008 applies to *regies autonomes*, national companies and enterprises and companies in which the state or an administrative-territorial unit is sole or majority shareholder, as well as to their subsidiaries (“**Business entities**”).

According to G.E.O. No. 79/2008, the management of Business entities is ensured by the managers thereof based on a mandate agreement concluded under the general conditions provided by Law No. 31/1990 and the specific conditions provided by G.E.O. No. 79/2008.

The specific conditions provided by G.E.O. No. 79/2008 mainly refer to criteria for reducing the monthly remuneration of the managers of Business entities and to the obligations of public institutions which have Business entities under their orders, authority, coordination or in their portfolio.

Due to the regulated characteristic of certain domains of activity, the provisions of G.E.O. No. 79/2008 do not apply to financial-banking and insurance companies, or to the company “Fondul Proprietatea” - S.A.

Repealed enactments

Government Emergency Ordinance No. 79/2001 on the strengthening of the economic-financial discipline and other financial provisions, approved with amendments by Law 59/2002, as further amended and completed.

Author

[maxim.dogoter@tuca.ro](mailto:maxim.dogoter@tuca.ro)

### **3 Statutory audit of annual financial statements**

Name of the enactment

Emergency Ordinance No. 90/2008 on the statutory audit of annual financial statements and of consolidated annual financial statements („G.E.O. No. 90/2008”)

Publication

Official Gazette of Romania, Part I, No. 481/30.06.2008

Entry into force

30 June 2008

Connections with the  
Community legislation

Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC

Main provisions

Statutory audit is the audit of the annual financial statements or of the consolidated annual financial statements, as provided by the Community law, transposed in the national regulations.

G.E.O. No. 90/2008 regulates the statutory audit of annual financial statements

and of consolidated annual financial statements.

G.E.O. No. 90/2008 establishes specific rules in respect of the performance of the statutory audit activity (the conditions for granting and withdrawing the authorizations of individuals/audit companies, the continuous professional training, the obligation to register statutory auditors and audit companies in a public registry, the observance of the independence and objectivity obligations, of confidentiality and professional secrecy). G.E.O. No. 90/2008 expressly provides for the possibility to approve the statutory auditors which are authorized in another Member State of the European Union. Also, G.E.O. No. 90/2008 establishes the audit standards and the quality ensuring systems, as well as the fines and sanctions applied by the Romanian Chamber of Financial Auditors to statutory auditors and audit companies.

G.E.O. No. 90/2008 establishes the Council for Public Supervision of the Statutory Audit Activity, which will operate as an autonomous public institution.

Author

[iulia.ciobotaru@tuca.ro](mailto:iulia.ciobotaru@tuca.ro)



Contact details:  
Victoriei Square  
4-8 Nicolae Titulescu Avenue  
America House, West Wing, 8<sup>th</sup> Floor  
Sector 1  
011141 Bucharest  
Romania

 (40-21) 204 88 90

 (40-21) 204 88 99

 office@tuca.ro

 www.tuca.ro

#### Disclaimer

This material is for reference only. It does not seek to provide final legal Advice, which may be requested according to each specific legal issue.

For details and clarifications on any of the topics dealt in our Legal Bulletin, please contact the following lawyers:

Florentin Țuca, Managing Partner (florentin.tuca@tuca.ro)

Cornel Popa, Partner (cornel.popa@tuca.ro)

Cristian Radu, Senior Associate (cristian.radu@tuca.ro)