

LEGAL NEWSLETTER

04 / 2008

Companies

We submit to your attention the publication of Emergency Ordinance no. 52/2008 amending and supplementing Law no. 31/1990 on companies and supplementing Law no. 26/1990 on the Trade Register (the „Ordinance”). According to the Ordinance, deeds whereby assets belonging to a company are alienated may be concluded by the company’s representatives based on the powers granted thereto further to the law, the articles of incorporation or through decision of the statutory bodies of such company, passed in accordance with the provisions of Law no. 31/1990 on companies and the company’s articles of incorporation, as the case may be, without the need of a notarized special power of attorney in this respect, even when such deeds are subject to mandatory notarization.

Moreover, the Ordinance supplements Law no. 31/1990 on companies by introducing rules on cross-border mergers and European companies. Cross-border mergers is the procedure whereby one or more companies, of which at least two are governed by the law of different member states, are dissolved without going into liquidation and their entire patrimony is transferred to another company in exchange for the allotment of shares in the absorbing company to the shareholders of the absorbed company and, possibly, for a cash payment of no more than 10 percent of the face value of the shares thus allotted.

The Ordinance also provides that European companies with registered offices in Romania become legal entities on the date of their registration with the Trade Registry. Within 30 days as of such registration, the National Trade Registry Office shall issue a notification to the Official Journal of the European Union, announcing the



registration of such company. Any European company registered in Romania may transfer its registered office to any other member state.

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Money laundering

We note the publication of Emergency Ordinance no. 53/2008 amending and supplementing Law no. 656/2002 on preventing and imposing penalties in respect of money laundering, and laying down measures to prevent and fight financing of terrorism (the "Ordinance"). According to the Ordinance, the National Office for the Prevention and Control of Money Laundering (the "Office") provides credit and financial institutions, as often as possible with information on individuals and/or legal persons which are exposed to

money laundering and financing of terrorism risk. Such information shall be conveyed by using secure means of communication with observance of the confidentiality thereof. The persons to whom the Ordinance applies must take adequate measures to prevent money laundering and financing of terrorism in their activities. Credit institutions shall not enter into correspondent relationships with a shell bank or with a credit institution known to allow shell banks to use its accounts, and if such relationships are ongoing, they must

cease. Also, credit and financial institutions do not have the right to open or operate anonymous accounts. The Office investigates suspicious transactions (i) upon notification by any person which is subject to the provisions of Law no. 656/2002 on preventing and imposing penalties in respect of money laundering, and (ii) of its own motion, when it becomes aware, by any means, of a suspicious transaction.

Expert tax appraisal

We submit to attention the publication Decision no. 13/2008 of the Tax Advisors Chamber approving Norms on the performance of expert tax appraisals upon request of courts of law, criminal investigation bodies, tax authorities or of any other interested party (the "Norms"). The Norms set up the professional tax auditing framework with respect to the obligations of individuals or legal entities under the Fiscal Code, compliance with

fiscal procedures set forth in the Fiscal Procedure Code and other rights and obligations regarding taxes, fees and contributions to the consolidated state budget. Expert tax appraisals can be classified as: (i) judicial expert fiscal appraisals and (ii) extra-judicial expert tax appraisals. Judicial expert tax appraisals can only be performed by individual tax advisors, whereas extrajudicial expert tax appraisals can also be performed by

consultancy companies. According to the Norms, tax advisors may perform expert appraisals after summoning the parties in writing via a notification sent with acknowledgement of receipt. As to the principles governing tax advising activity, the Norms mention inter alia integrity, independence, objectivity and confidentiality.

Payment instruments

We note the publication of Government Emergency Ordinance no. 38/2008 amending and supplementing Law no. 59/1934 on checks (the "Ordinance"). Pursuant to the Ordinance, checks may be presented for payment in original or by truncation. Truncation is an electronic process consisting of the following successive procedures: (i) conversion in electronic format of the relevant information from the original check; (ii) replicating the original check in electronic format and (iii) transmission of the electronic information obtained through the above procedures to the credit institution making the payment. The use of a truncated check as payment method shall give rise to the same legal effects as the use of the original check. A truncated check presented for payment

may be rejected in whole or in part by the credit institution making the payment also via electronic means.

We note the publication of Romanian Government Emergency Ordinance no. 39/2008 amending and supplementing Law no. 59/1934 on the bill of exchange and promissory note (the "Ordinance"). The Ordinance provides that a bill of exchange may be presented for payment in original or by truncations. Pursuant to such Ordinance, truncation is an electronic process consisting of the following successive procedures: (i) conversion in electronic format of the relevant information from the original bill of exchange; (ii) replicating the original bill of exchange in electronic format and (iii) transmission of the electronic information obtained through the above

procedures to the credit institution making the payment. Credit institutions may proceed to truncation provided between them there is a prior agreement in place with respect to payment arrangements or there is an agreement for adoption of a new payment system.



² Official Gazette, Part I, no. 333 of 30 April 2008

³ Official Gazette, Part I, no. 270 of 7 April 2008

⁴ Official Gazette, Part I, no. 284 of 11 April 2008

Health

We submit to your attention the publication of Government Decision no. 380/2008 approving the Framework agreement regarding the conditions of granting medical assistance under the health insurance system for 2008 (the "Agreement"). The Agreement lays down the conditions for closing agreements with persons providing medical services, medicines and medical devices. Amongst the amendments we mention that family doctors in urban settlements must register on their list at least 1000 insured persons and beneficiaries of minimal health services package by December 31, 2008. In order for enlisted patients to gain easier access to additional services which require special endowments, family doctors may enter into agreements with medical service providers. Doctors with paramedic specializations may carry out their activity with one or more providers who have concluded agreements with the Health Insurance House. The Agreement provides that suppliers of medical devices destined for recovery of certain organic or functional deficiencies without continuous medical supervision are entitled to reimbursement by the National

Health Insurance House of the counter-value of the supplied medical equipment, including the lease amounts within 30 days from the date when the documentation required for refund is submitted. We submit to attention the publication of Order no. 571/2008 of the Minister of Public Health amending and supplementing Order no. 569/2007 of the Minister of Public Health approving the list of reimbursement prices for medicines sold in open circuit pharmacies for treatment of patients included in certain health sub-programs within the National Health Program with curative purposes, nominated by Government Decision no. 292/2007 (the "Order"). According to the Order, the provisions of the abovementioned Order no. 569/2007 of the Minister of Public Health are also applicable for the 2008 national health programs. Annex no. 1 to the Order contains (i) the nonproprietary international names of medicines sold in open circuit pharmacies for treatment of patients included in certain health sub-programs within the National Health Program with curative purposes, as well as (ii) the nonproprietary international names of

medicines included in the sub-program for treatment and monitoring of HIV/AIDS patients and post-exposure treatment. Annex no. 2 to the Order contains the List of reimbursed prices for medicines.

We note the publication of Order no. 522/236/2008 of the Ministry of Public Health approving the methodological Norms for the Framework agreement regarding the conditions of granting medical assistance under the health insurance system for 2008.



Other regulations

Judicial cooperation

We submit to your attention the publication of Law no. 85/2008 approving Government Emergency Ordinance no. 123/2007 on certain measures for the consolidation of judicial cooperation with EU Member States (the "Law"). According to the Law, the Romanian liaison magistrate also carries out activities in connection with handling exchange of information and statistics designed to promote mutual understanding of legal systems and legal data bases and to consolidate relations between legal professions in the two states.

The liaison magistrate's term of office is up to 3 years and may be renewed only once,

and is established via order of the Minister of Justice. The national member to Eurojust, who represents Romania within the European Judicial Cooperation Unit Eurojust maintain professional seniority as magistrates during their permanent mission abroad, as well as the rights granted by law to judges, prosecutors and assimilated officers, but cannot benefit from the same rights granted under the legislation in force to staff delegated in permanent positions abroad.

In case salary rights granted in Romania are higher than those available within the permanent mission abroad, the more favorable salary rights shall be kept.

Traditional and ecological products

We note the publication of the Government Emergency Ordinance no. 42/2008 on the foundation and operation of the National Office of Traditional and Ecological Romanian Products (the "Ordinance"). Pursuant to such Ordinance, the National Office of Traditional and Ecological Romanian Products (the "National Office") is a public institution with legal personality, subordinated to the Ministry of Agriculture and Rural Development, financed entirely from the state budget. Amongst the responsibilities of the National Office, we mention: (i) ensuring the promotion of

⁵ Official Gazette, Part I, no. 284 of 11 April 2008
⁶ Official Gazette, Part I, no. 257 of 1 April 2008

⁶ Official Gazette, Part I, no. 252 of 1 April 2008

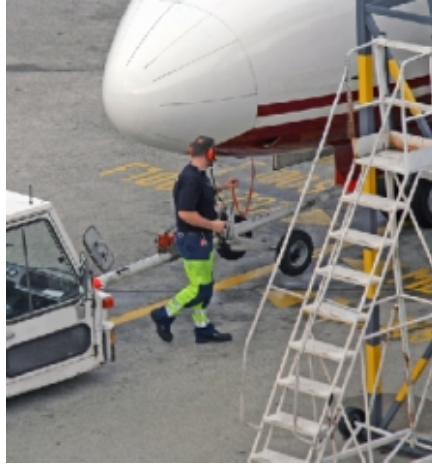
⁷ Official Gazette, Part I, no. 257 of 1 April 2008

“Quality Products” and “Ecological Products” concepts; (ii) providing technical assistance in drafting bills for the promotion of traditional and ecological Romanian products; (iii) ensuring promotion of traditional and ecological Romanian products in the media.

Aeronautic staff

We note the publication of Law no. 452/2008 on the Status of technical ground staff in the Romanian Civil Aviation (the “Law”). The Law establishes the legal regime of technical ground staff in civil aviation (The “Technical Staff”), the technical duties carried out, the Technical Staff categories in Romanian Civil Aviation, as well as the rights and obligations thereof, regardless of the type of ownership of the undertakings which employ such staff. The Technical Staff carries out specific activities meant to ensure the adequate operation of aviation technology, to maintain its availability and full safety and security, in

compliance with national laws, European regulations, as well as with standards and practices recommended by international civil aviation organizations to which Romania is part. The Technical Staff shall perform its duties only after adequate specialized training, examination and certification.



Republications

We submit to your attention the republication of the following enactments:

- Law no. 193/2000 on abusive clauses in agreements concluded between traders and consumers;
- Law on fruit trees no. 348/2003;
- Law no. 240/2004 on liability of producers for damages generated by defective products;
- Law no. 289/2004 on the legal regime of consumer credits for individual consumers;
- Law no. 98/1994 on penalizing minor offences to legal hygiene and public health norms.

ECHR jurisprudence

We note the publication of Decision of 29 June 2006 in the Case Jujescu versus Romania (the “Decision”). The Decision was passed following a notification by the claimant to the European Court of Human Rights (the “Court”) seeking restitution of a property consisting of 3 apartments which had been abusively taken over under Decree no. 92/1950 and which were sold by the State in 1996. In 1997 the claimant filed a restitution claim against Bucharest City Hall with Bucharest Sector 5 Ordinary Court with respect to the said property, the Court recognizing the claimant’s ownership and ordering for the claimant to be formally vested in possession of the property. Subsequently, the claimant filed actions for acknowledging the nullity of the sale-purchase agreements, as well as restitution claims against third party buyers which were dismissed by the relevant courts. The Court decided that the claimant was entitled to restitution of the property within three months; otherwise the State would have to pay the claimant, within the same dead line,

damages amounting to EUR 100,000. Besides legal expenses, the state must also pay the claimant moral damages in the amount of EUR 3,000. Moreover, the Court found that, from the expiration of the above-stated term and until payment is made, a simple interest shall be applied to the said amounts at a rate equal to that of the marginal loan facility available for the same period at the European Central Bank plus three percent.

We submit to attention the publication of the Decision of 11 October 2007 in the Case Dragoş versus Romania (the “Decision”). The Decision was passed following a notification to the Court in which the claimant argued that, after having been reinstated as owner of a property abusively taken over in the 1950’s, she was not vested in possession of such property, as it had been sold by the State. The claimant’s actions for annulment of such sale as well as for the recovery of the property she owned were rejected by the relevant courts. The Court ruled that the property must be

returned to the claimant by the Romanian State within three months from the date the Decision was declared final, otherwise the State would have to pay the claimant, within the same dead line, damages amounting to EUR 70,000 converted into RON at the exchange rate in force on the date of payment. Moreover, the Court found that, from the expiration of the abovementioned term and until payment is made, a simple interest shall be applied to the said amounts at a rate equal to that of the marginal loan facility available for the same period at the European Central Bank plus three percent.

⁹ Official Gazette, Part I, no. 292 of 15 April 2008

¹² Official Gazette, Part I, no. 305 of 18 April 2008

¹⁵ Official Gazette, Part I, no. 319 of 23 April 2008

¹⁰ Official Gazette, Part I, no. 305 of 18 April 2008

¹³ Official Gazette, Part I, no. 300 of 17 April 2008

¹⁶ Official Gazette, Part I, no. 325 of 24 April 2008

¹¹ Official Gazette, Part I, no. 304 of 18 April 2008

¹⁴ Official Gazette, Part I, no. 313 of 22 April 2008

¹⁷ Official Gazette, Part I, no. 314 of 22 April 2008

HCCJ jurisprudence

We note the publication of Decision no. LXII/24 September 2007 of the High Court of Cassation and Justice („HCCJ”). The HCCJ, assembled in Joint Sections to analyze the appeal in the interest of law declared by the General Prosecutor of the Prosecutor's Office attached to the HCCJ, on enforcement of the provisions of Art.133 para. (3) of Law no. 31/1990 on companies, regarding admissibility of appeal against the Presidential Order which whereby the request for suspension of execution of the decision of a General Meeting of Shareholders is ordered. HCCJ admitted the appeal in the interest of law and ruled that the provisions of Art. 133 para. (3) of Law no. 31/1990 shall be constructed in the sense that the Presidential Ordinance

whereby the request for suspension of execution of the Decision of a General Meeting of Shareholders is rejected may be appealed.

We note the publication of Decision no. LXI/24 September 2007 of HCCJ which assembled in Joint Sections to analyze the appeal in the interest of law declared by the General Prosecutor of the Prosecutor's Office attached to the HCCJ, on enforcement of the provisions of Art. 190 para. (1) item c) [changed to Art.220 para. (1) item c)] of the Fiscal Procedure Code, related to Art. 191 para. (2) [changed to Art.221 para. (2)] of the same Code, regarding the status of subject of the contravention consisting in holding

excisable products subject to marking outside fiscal warehouses or the sale of such products, as per title VII of the Fiscal Code, without being marked or being marked inadequately or by false marks, by individuals who do not have the capacity of traders. HCCJ admitted the appeal in the interest of law and ruled that the above-stated provisions shall be constructed in the sense that persons who do not have the capacity of fiscal warehouse keeper or trader cannot be subjects of the abovementioned contravention.

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This report is a summary of recently published normative acts that we consider important for our clients and our friends and generally for the business environment in Romania.

The report does not provide legal assistance on specific issues.

Should you need further information and/or comments on the enactments or on specific

legal issues, please contact one of the following attorneys-at-law:

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¹⁸ Official Gazette, Part I, no. 324 of 24 April 2008

¹⁹ Official Gazette, Part I, no. 276 of 8 April 2008

²⁰ Official Gazette, Part I, no. 274 of 7 April 2008