

# LEGAL NEWSLETTER

2 / 2009

## HEALTH

We signal the publication of Order no. 74/2009 of the Minister of Health for the amendment and supplementation of Order no. 1,803/2008 of the Minister of Public Health on the pricing of medicine products for human purposes of which the insured persons may benefit, with or without a personal contribution, based on a medical prescription, as well as referring to the patients included in the national health programs, in the social health insurance system<sup>1</sup>. The foreign exchange rates used for the calculation of the wholesale and retail sale prices, as well as for the calculation methodology of the reimbursement prices for medicines to be granted to patients enclosed in the national health programs, are communicated by the National Prognosis Commission, for 2009. We draw attention to the publication of Order no. 75/2009 for the approval of the Rules on the manner of calculation of prices for human-purpose medicines<sup>2</sup>. There are subject to the endorsement by the Ministry, as regards their price, the medicines

released based on a medical prescription, whose marketing is authorized by the National Medicine Agency or based on the decision of the European Commission granted pursuant to the centralized procedures. The price of the OTC medicines, to be released without a medical prescription, is established and modified in a free manner.

Decision no. 54/2009 of the Government of Romania on the conditions for the entry of medical devices on the market (the “Decision”)<sup>3</sup> was published. The persons responsible for the entry of the medical devices on the market have the obligation to become registered with the Ministry of Health.

We signal the publication of Government Decision no. 55/2009 on the active implantable medical devices (the “Decision”)<sup>4</sup>. The manufacturers introducing such devices on the market have the obligation to become registered with the Ministry of Health.

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## FINANCIAL REGULATIONS

We note the publication of the Technical Rules of the National Bank of Romania for the amendment of the technical rules regarding the cheques<sup>5</sup>, the bills of exchange and the promissory notes<sup>6</sup> (the “Rules”). The cheques, the bills of exchange and the promissory notes printed prior to the date of the Rules coming into force may be used until the finishing thereof. We note the publication of Order no. 138/2009 of the Minister of Public Finance for the approval of the procedures on the

contracting of the Governmental public debt regarding the issuance of State guarantees<sup>7</sup> (the “Order”). The Order encloses procedures referring to: (i) the issuance of indemnity bonds for the economic operators' contracting of a loan, under the State guarantee, from the commercial banks; (ii) the entering, by the economic operators and by the administrative and territorial units, into loans, under the State guarantee, from the international financing institutions or based on bilateral

agreements; (iii) the issuance of indemnity bonds for loans contracted by the administrative and territorial units from the commercial banks.

We signal the publication of Decision no. 1/2009 of the Romanian Court of Accounts for the approval of the Regulation on the organization and performance of specific activities of the Court of Accounts, as well as for the capitalization of the acts resulting from such activities (the “Regulation”)<sup>8</sup>. The Regulation sets forth details on the

<sup>1</sup> Official Gazette, Part I, no. 62 of 2 February 2009.

<sup>2</sup> Official Gazette, Part I, no. 62 of 2 February 2009.

<sup>3</sup> Official Gazette, Part I, no. 94 of 17 February 2009.

<sup>4</sup> Official Gazette, Part I, no. 112 of 25 February 2009.

<sup>5</sup> Technical Rule no. 3/2009 of the National Bank of Romania for the amendment of Technical Rule no. 4/2008 of the National Bank of Romania regarding the cheques, published in the Official Gazette, Part I, no. 114 of 25 February 2009.

<sup>6</sup> Technical Rule no. 4/2009 of the National Bank of Romania for the amendment of Technical Rule no. 5/2008 of the National Bank of Romania regarding the bills of exchange and the promissory notes, published in the Official Gazette, Part I, no. 114 of 25 February 2009.

<sup>7</sup> Official Gazette, Part I, no. 62 of 2 February 2009.

<sup>8</sup> Official Gazette, Part I, no. 78 of 10 February 2009.

## FINANCIAL REGULATIONS

organization and performance of the financial audit and of the performance audit,

as well as on the organization and performance of the external public audit by

the Audit Authority in reference to the non-reimbursable Community funds and to the related national co-funding.

## REAL ESTATE ABUSIVELY TAKEN OVER

We draw attention to the publication of Law no. 1/2009 for the amendment and supplementation of Law no. 10/2001 on the legal status of certain real estate abusively

taken over in the period 6 March 1945 – 22 December 1989<sup>9</sup>. Pursuant to the envisaged amendments, the restitution in kind is replaced by restitution in equivalent,

in case of real estate alienated based on the provisions of Law no. 112/1995<sup>10</sup>, in observance of the legal provisions.

## COMMUNICATIONS

Decision no. 77/2009 of the National Communication Authority on the obligation of the providers of electronic communication services intended for public use to inform the end users<sup>11</sup> was published.

The obligations consist of information by own means of the end user, making the information regarding the technical and commercial conditions for the provision of services available to the public, as well as

making the detailed invoices available to the subscribers.

## OTHER REGULATIONS

### SOCIAL SECURITY

We note the publication of Decision no. 3/2009 of the Supervision Commission of the Private Pension System for the approval of Rule no. 3/2009 on the investments of privately-managed pension funds and the organization of the investment activity (the “Rule”)<sup>12</sup>. The Rule sets forth the powers and obligations of the private pension administrator in respect of the investment activity, as well as the procedure for the classification of the privately-managed pension funds according to risk degrees.

We signal the publication of Decision no. 4/2009 of the Supervision Commission of the Private Pension System for the approval of Rule no. 4/2009 on the investment of the optional pension funds and the organization of the investment activity (the “Rule”)<sup>13</sup>. The Rule establishes the powers and obligations of the optional pension

administrator in respect of the investment activity, the management of the interest conflict, as well as the procedure for the classification of the optional pension funds according to risk degrees.

We draw attention to the publication of Government Emergency Ordinance no. 8/2009 on the granting of vacation vouchers (the “Ordinance”)<sup>14</sup>. As of the date of the Ordinance coming into force, for the recovery and maintenance of working performance of the salary employees, the employers that contract personnel through the conclusion of an individual work agreement may grant, under the legal provision, value vouchers, named vacation vouchers.

### INFORMATION SOCIETIES

We signal the publication of Decision no. 13/2009 of the Government of Romania on the establishment of the Inter-ministry

Council the “Council for the promotion of the information society in Romania”<sup>15</sup> (the “Council”). The establishment of such Council aims at generating the sustainable premises for the implementation of the information society in Romania, for the purpose of drafting, integrating, correlating and monitoring the policy in the field of information society services of the Government.

### LEGISLATIVE BRIEFING

We note:

- the publication of Decision no. 76/2009 on the organization and operation of the Ministry of Transports and Infrastructure<sup>16</sup>;
- the republication of Law no. 138/2004 for land improvement<sup>17</sup>.

<sup>9</sup> Official Gazette, Part I, no. 63 of 3 February 2009.

<sup>10</sup> Official Gazette, Part I, no. 279 of 29 November 1995.

<sup>11</sup> Official Gazette, Part I, no. 88 of 13 February 2009.

<sup>12</sup> Official Gazette, Part I, no. 82 of 11 February 2009.

<sup>13</sup> Official Gazette, Part I, no. 85 of 12 February 2009.

<sup>14</sup> Official Gazette, Part I, no. 110 of 24 February 2009.

<sup>15</sup> Official Gazette, Part I, no. 100 of 19 February 2009.

<sup>16</sup> Official Gazette, Part I, no. 89 of 13 February 2009.

<sup>17</sup> Official Gazette, Part I, no. 88 of 13 February 2009.

## ECHR CASE LAW

We note the publication of the Decision of the European Court of Human Rights dated 15 November, 2007 in the case Belasin versus Romania (the “**Decision**”)<sup>18</sup>. The Decision was issued further to a claim filed by the plaintiffs to ECHR, regarding the infringement of the right to fair trial and of the right to the peaceful enjoyment of one's property. ECHR ruled that: (i) the decision passed by a court as final in any dispute, may no longer be reopened for discussion, and any re-examination is possible only for justified and compelling reasons; (ii) the plaintiffs' right to property was acknowledged by a final decision and, therefore, it was not revocable; consequently, the state's selling the asset constitutes an alienation of property. ECHR ordered the property at issue be restituted to the plaintiff within 3 months otherwise, the Romanian state will be liable for material damages.

We bring to attention the publication ECHR Decision date 4 March, 2008 in the case Licu versus Romania<sup>19</sup>. The plaintiff filed a claim to the ECHR invoking breach of the principle of legal certainty and of the right to peaceful enjoyment of one's property. ECHR ruled that: (i) the prosecutor's intervention in a civil dispute, who was not part in the procedure and the retrial of a decision that has become final constitutes a breach of the plaintiff's right to a fair trial and of the principle of legal certainty; (ii) if the plaintiff's claim against the Romanian state was acknowledged by a final decision, the annulment thereof represents an interference with the plaintiff's ownership right and a disregard of the proportionality

criterion for no public utility purpose.

We note the publication of ECHR Decision dated June 17 iunie 2008 in the case Matache and others versus Romania<sup>20</sup>. ECHR received a claim for just satisfaction, further to the prejudice caused by the non-enforcement by administrative authorities of a final court decision, as well as by the inefficiency of retrocession laws. ECHR deemed the plaintiffs suffered a material prejudice and, consequently, granted the same material and moral damages, payable by the Romanian state within 3 months as of the final settlement.

We bring to attention the publication of ECHR Decision dated July 29, 2008 in the case Oancea and others versus Romania (the “**Decision**”)<sup>21</sup>. The Decision was issued further to a claim filed by the plaintiffs to ECHR whereby invoking breach of the right to peaceful enjoyment of one's property. ECHR ascertained that the invoked right was breached, as the plaintiffs were prevented from using the property restituted by final decision or to proceed to lease thereof, considering that the evacuation of former state lessees was repeatedly denied. Therefore, ECHR ordered the state to pay material and moral damages as well as any other amount that may be owed by plaintiffs as tax.

We note the publication of ECHR Decision dated October 11, 2007 in the case Pușcaș versus Romania<sup>22</sup>. The Plaintiff filed a claim to ECHR invoking breach of the principle of legal certainty and of the right to peaceful enjoyment of one's property. The court ascertained that above-mentioned rights were breached and ordered, *inter alia*,

restitution of the property claimed by the plaintiff within 3 months or the payment of material damages. The Romanian state was also ordered to pay moral damages and legal fees.

We note the publication of ECHR Decision dated February 7, 2008 in the case Silimon and Gross versus Romania<sup>23</sup>. The plaintiffs filed a claim to ECHR for breach of the right to peaceful enjoyment of property, further to the decision of domestic courts which, although had acknowledged the illegality of the nationalization and the lack of a valid title over the premises under dispute, confirmed the sale thereof by the State. ECHR ruled that the breach of the ownership over the premises under dispute, corroborated by the lack of compensation in this respect, constitutes the breach of the right to peaceful enjoyment of property. Therefore, the State was ordered to reconstitute the premises under dispute, as well as to pay material and moral damages.

<sup>18</sup> Official Gazette, Part I, no. 63 of 3 February 2009.

<sup>19</sup> Official Gazette, Part I, no. 64 of 3 February 2009.

<sup>20</sup> Official Gazette, Part I, no. 65 of 3 February 2009.

<sup>21</sup> Official Gazette, Part I, no. 67 of 4 February 2009.

<sup>22</sup> Official Gazette, Part I, no. 279 of 29 November 1995.

<sup>23</sup> Official Gazette, Part I, no. 107 of 23 February 2009.

# CASE LAW OF THE HIGH COURT OF CASSATION AND JUSTICE

We submit to attention the publication of Decision no. 33 dated June 9, 2008 of the High Court of Cassation and Justice („HCCJ”)<sup>24</sup>, on the re-examination of the second appeal in the interest of the law regarding the admissibility of common law-grounded claims with respect to dwellings abusively seized by the State, claims filed

subsequent to the enactment of Law no. 10/2001 (the “Law”)<sup>25</sup>. HCCJ stated that: (i) the provisions of the Law are special, having priority over the common law, and individuals subject to the provisions of the Law cannot opt between the means of redress provided by this enactment or by those of the common law; (ii) the application

of certain provisions of the Law may be cancelled if they are contrary to the European Convention on Human Rights.

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This report is a summary of recently published legislative acts, which we deem important for our clients and friends, and for the Romanian business environment in general.

The report does not provide legal advice with regard to particular aspects.

Should you require additional information and/or comments with regard to the legislative acts or to specific legal matters, please contact

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<sup>24</sup> Official Gazette, Part I, no. 108 of 23 February 2009.

<sup>25</sup> Official Gazette, Part I, no. 798 of 2 September 2005.