

LEGAL NEWSLETTER

12 / 2008

STATE AID

We note the publication of Government Decision no. 1680/2008 on the establishment of a State aid scheme (the “**Scheme**”) aimed at ensuring sustainable economic development (the “**Decision**”).¹ Further to the Scheme, individual grants may be allotted under the conditions provided by the Decision to undertakings which perform an initial investment exceeding RON equivalent of EUR 30 million and generate at least 300 new jobs provided that such undertakings file an application to this end prior to the commencement of the works. The abovementioned investments and jobs may

be made/created in all fields of activity, except for the ones listed in Annex no. 1 to the Decision. The Decision also sets forth a number of undertakings and types of activities which do not qualify for the application of the Scheme as follows: businesses deemed to be in distress and those against which a decision for recovery of State aid has been issued. At the same time, it specifies the types of State aid that may not be granted based on the Scheme. The Scheme shall be applied for a period of 5 years, in the 2009 – 2013 period, and is limited to a total budget of EUR 1 billion.

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INSURANCE

We bring to attention the publication of Order no. 21/2008 of the Insurance Supervisory Commission for the application of the Norms regarding the use of the Form for amicable ascertainment of accidents (the “**Form**”).² Said Form shall serve to inform insurance companies of all road accidents which occurred on Romanian territory and in which two vehicles were involved, provided that such accidents only resulted in material damages. In such cases, provided that the Form is filled in and signed by the drivers of both vehicles involved in the accident, it is no longer necessary for the police to draft any

ascertainment documents. Insurance companies have the obligation to print the Form and distribute it to insured entities. The submission of the Form to the insurance companies is tantamount to a damage report being filed, thus obliging the insurer to open the damage file and ascertain the damages. At the same time, based on the Form, the insurer has the obligation to release the document pursuant to which the vehicle may be repaired in accordance with the law. The abovementioned provisions shall come into force starting with July 1, 2009.

AUDIO-VISUAL

We note the publication of Emergency Ordinance no. 181/2008 amending and supplementing the Audio-Visual Law no. 504/2002³ (the “**Ordinance**”). The amendments and supplements operated further to the Ordinance refer, amongst others, to: (i) the definition of certain terms; (ii) regulating the concept of “European

masterpieces”; (iii) replacing the terms “*radio service supplier*” and respectively “*service provider*” with the term “*audio-visual media service provider*” within the text of Law no. 504/2002; (iv) the duties and obligations of the National Audiovisual Council (“**CNA**”); (v) the financing and operation of CNA; (vi) regulating audio-

visual commercial communications; (v) protection of minors; (vi) right to reply; (vii) legal status of property in the audio-visual industry; (viii) licenses and authorizations; (ix) the limits of exclusivity rights; (x) offences and penalties.

¹ Official Gazette, Part I, no. 897 of December 30, 2008.

² Official Gazette, Part I, no. 876 of December 24, 2008.

³ Official Gazette, Part I, no. 809 of December 3, 2008.

FINANCIAL REGULATIONS

We note the publication of Order no. 39/2008 of the National Bank of Romania on the interdiction to use debit payment instruments such as cheques, bills of exchange and promissory notes in the previous template⁴ (the “**Order**”). According to the Order, starting with December 8, 2008, debit payment instruments such as cheques, bills of exchange and promissory notes may no longer be issued under the template regulated by the Technical Rules of the National Bank of Romania no. 9/1994 on the cheque and respectively by the Technical Rules of the National Bank of Romania no. 10/1994 on the bill of exchange and promissory note. Starting with December 8, 2008 credit institutions may no longer accept for payment the abovementioned debit payment

instruments unless the beneficiary or payer proves that such instruments were issued further to transactions concluded before December 8, 2008. Breaches to the provisions of the Order shall be punished by the National Bank of Romania in accordance with Law no. 312/2004 on the Statute of the National Bank of Romania.

We bring to attention the publication of Order no. 3512/2008 on financial and accounting documents issued by the Minister of Economy and Finance⁵ (the “**Order**”). Amongst the appendixes to the Order one may note: (i) the methodological rules for drafting and using financial documents; (ii) the specific rules for drafting and using the financial documents; (iii) templates of financial and accounting documents; (iv) financial and accounting

documents to be kept for 5 years as of the end of the financial year during which they were drawn up; such documents shall be preserved in the archives of entities having the obligation to organize and perform their own accounting operations, namely financial and treasury accounting, adjusted to the specifics of their business. The Order repeals the provisions of Order no. 1850/2004 of the Minister of Economy and Finance on financial and accounting ledgers and forms⁶.

We note the publication of Order no. 13/2008 of the National Bank of Romania approving the Accounting Regulations compliant with the European Directives, applicable to credit institutions, non-banking financial institutions and to the Banking system deposits insurance fund⁷.

TAXATION

We bring to attention the publication of Government Emergency Ordinance no. 200/2008 amending and supplementing Law no. 571/2003 on the Fiscal Code⁸ (the “**Ordinance**”). Amongst the amendments operated further to the Ordinance, we note: (i) certain fiscal incentives are granted in respect of research and development activities; (ii) exemption from taxation of revenues coming from interest on term deposits and/or savings instruments, if such revenues are obtained starting with January 1, 2009; (iii) reduced 5% VAT applicable to delivery of homes as part of social policies; (iv) regulation of the movement of a product subject to excise duties in suspensive regime after such product has been introduced into free circulation by simplified customs procedures; (v) exemption from payment of tax on dividends reinvested for the purpose of maintaining and generating new jobs.

Government Decisions no. 1618/2008 (the “**Decision**”) amending and supplementing the Methodological Rules for the application of Law no. 571/2003 on the Fiscal Code, approved by Government Decision no. 44/2004⁹ has been published. Pursuant to the Decision: (i) until January 1, 2012 fiscal groups may be established only by taxable entities which are classified as large taxpayers; (ii) any entity erroneously including VAT in an invoice or in any other document

deemed as an invoice shall pay such tax to the State budget whilst the beneficiary shall not have the right to deduct such tax if the operation is exempted without deduction right; (iii) if suppliers or providers having erroneously invoiced an exempted operation without deduction right cannot rectify the erroneous invoice due to commencement of liquidation, bankruptcy, dissolution proceedings or due to other similar situations, the beneficiary may request reimbursement from the budget of the undue tax whilst it was paid and not due provided that it brings evidence regarding tax payment to the supplier and that the supplier paid VAT payment by the supplier to the State budget. The Decision also details the effective VAT computation method.

We note the publication of Order no. 1600/2008 of the Minister of Economy and Finance and of the National Fiscal Administration Agency amending and supplementing Procedure no. 1173/2008 on the assignment of fiscal receivables managed by the National Fiscal Administration Agency¹⁰ (the “**Order**”). Amongst the amendments operated further to the Order we note the following: (i) the procedure for assignment of fiscal receivables managed by the National Fiscal Administration Agency (the “**Agency**”) and its subordinate bodies is commenced at the

initiative of the Agency (which also establishes the face value of fiscal receivables to be subject to assignment) or of the relevant fiscal body managing the assigned debtor (*ex officio* or upon the notification of a third party); (ii) ancillary fiscal liabilities pertaining to budgetary receivables making the object of assignment operations shall be included in the value of assigned receivables; (iii) with a view to grant the fiscal receivables assignment agreement, the relevant commission must publicize the assignment at least 15 days before the date established for opening the bids; (iv) a bid shall be disqualified if the amount of the bid is lower than the face value of the fiscal receivables, if it is intended for a longer term than the one provided by the procedure or if it fails to specify whether payment shall be made in full or in installments or if it does not specify the number of installments. The Order shall also apply to on-going procedures on the date it comes into force.

We note the publication of Order no. 3659/2008 of the Minister of Economy and Finance on the template and contents of certain forms for recovery of receivables stemming from debentures issued in Romania when such recovery is made in a Member State of the European Union¹¹.

⁴ Official Gazette, Part I, no. 814 of December 4, 2008.

⁵ Official Gazette, Part I, no. 870 of December 23, 2008.

⁶ Official Gazette, Part I, no. 23 and 23 bis of January 7, 2005.

⁷ Official Gazette, Part I, no. 879 of December 24, 2008.

⁸ Official Gazette, Part I, no. 815 of December 4, 2008.

⁹ Official Gazette, Part I, no. 865 of December 22, 2008.

¹⁰ Official Gazette, Part I, no. 805 of December 2, 2008.

¹¹ Official Gazette, Part I, no. 878 of December 24, 2008.

PERSONAL DATA PROTECTION

We note the publication of Decision no. 95/2008 of the National Authority for the Supervision of Personal Data Processing¹² (the “**Decision**”) establishing the standard form for notifications provided under Law no. 677/2001 on protection of persons in relation to personal data processing and free circulation thereof. The Decision was issued in accordance with the relevant regulations of the European Community in the field, with a view to standardize and simplify the procedures for notification of national supervisory authorities, in order to

avoid excessive administrative formalities.

We bring to attention the publication of Decision no. 90/2008 of the President of the National Authority for the Supervision of Personal Data Processing (the “**Authority**”) acknowledging the existence of an appropriate protection level for personal data in Jersey (the “**Decision**”) ¹³. According to the Decision, considering that in the abovementioned state an appropriate level of personal data protection is provided, the transfer of personal data to Jersey may occur with observance of the provisions of

Art.29 paragraphs (1) and (2) of Law no. 677/2001 on protection of persons in relation to personal data processing and free circulation thereof¹⁴. The Authority may prohibit or suspend transfers in the cases expressly provided within the text of the Decision. Such prohibition or suspension shall be removed as soon as the Authority is notified that the reasons leading to the enforcement of such measures have ceased.

HEALTH

We note the publication of Order no. 1964/2008 of the Minister of Public Health approving the Rules for establishment, organization and operation of units for wholesale distribution of human-use medicines¹⁵ (the “**Rules**”). For the purpose of carrying out wholesale medicines distribution activities, applicants must hold a wholesale medicine distribution authorization issued in the European Economic Area. In Romania, wholesale distribution authorizations are issued by the National Medicines Agency (“**ANM**”). Pursuant to the Rules, the abovementioned authorization is required for any wholesale operator within the distribution chain, including brokers and traders in as long as these perform activities involving human-use medicines. Only medicines authorized for introduction on the market in accordance with the law may be distributed. In the cases restrictively mentioned under Law no. 95/2006 on reform in the health field¹⁶, medicines may be distributed in lack of an authorization for introduction on the market, based on express approval granted by the Ministry of Public Health. By exception, medicines that are not authorized for introduction on the market may be distributed to clinical units where ANM approved the conduction of clinical investigations. The Rules detail the procedure for obtaining a wholesale distribution authorization, as well as the

cases in which the same may be suspended.

We note the publication of Order no. 1962/2008 of the Minister of Public Health approving the Procedure for issuing authorizations for parallel import of human-use medicines (the “**Order**”) ¹⁷. According to the Order, parallel import is the operation whereby medicines authorized for introduction on the market by ANM are introduced in Romania through other distribution channels than the ones agreed by the holder of the said authorization. Minor differences are accepted between medicines introduced through parallel imports and the medicines authorized for introduction on the market in Romania, provided that there is no difference in the therapeutic effect thereof as compared to the original medicines which are distributed directly. ANM manages the parallel importation of medicines in accordance with the Order and relevant European Community acquis. Medicines introduced in Romania through parallel imports may not be distributed or sold before ANM issues authorizations for parallel import. Besides the procedure for issuing the authorization for parallel imports, the Order regulates the cases when the same is withdrawn, as well as the authorizations that must be held by parallel importers of medicines and the obligations incumbent thereon.

We note the publication of Order no.

1963/2008 of the Minister of Public Health approving the Good practice guide for wholesale medicine distribution (the “**Guide**”) ¹⁸. The Guide is an adapted translation of the Good Distribution Practice guidelines prepared by the European Commission, which have been supplemented with the provisions of the Good Distribution Practices for Pharmaceutical Products guidelines, prepared by the World Health Organization. The Guide does not apply to commercial relationships amongst parties involved in distribution of human-use medicines, or to labor protection issues. The Guide includes provisions referring to: (i) the organization and management of wholesale distribution units; (ii) personnel involved; (iii) quality management; (iv) storage locations; (v) storage and handling of medicines; (vi) transportation means and handling equipment; (vii) transportation containers and labeling thereof; (viii) medicines distribution; (ix) re-packaging and re-labeling operations.

We note the publication of Government Decision no. 1714/2008 for the approval of the Framework agreement regarding the conditions under which medical care may be provided within the social health insurance system for the year 2009¹⁹ (the “**Decision**”). The Decision regulates: (i) the contractual relationships between the health insurance homes and medical care

¹² Official Gazette, Part I, no. 876 of December 24, 2008.

¹³ Official Gazette, Part I, no. 822 of December 8, 2008.

¹⁴ Official Gazette, Part I, no. 790 of December, 12 2001.

¹⁵ Official Gazette, Part I, no. 855 of December 19, 2008.

¹⁶ Official Gazette, Part I, no. 372 of April 28, 2006.

¹⁷ Official Gazette, Part I, no. 867 of December 22, 2008.

¹⁸ Official Gazette, Part I, no. 865 of December 22, 2008.

¹⁹ Official Gazette, Part I, no. 885 of December 29, 2008..

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service providers, suppliers of medicines and certain sanitary materials; (ii) providing medicines with and without personal contribution in ambulatory treatment and

providing certain specific sanitary materials for ambulatory treatment of patients included in certain national health programs with therapeutic purpose; (iii) providing

medical devices intended to recover certain organic or functional insufficiencies in

CUSTOMS

Order no. 8061/2008 of the National Fiscal Administration Agency (the “**Order**”) amending and supplementing the Norms regarding simplified customs procedures, approved by Order no. 5465/2007 of the Vice-President of the National Agency for Fiscal Administration²⁰ has been published. According to the amendments operated thereby, the simplified customs procedures

may no longer be used by all Romanian legal persons but only by those who declare merchandise in their own name or act in their capacity as representatives in certain cases. At the same time, new categories of goods which are exempted from the application of simplified customs procedures were added. New provisions were also introduced in respect of the

contents and form of the request to use the abovementioned procedures and the documents to be attached to such request. At the same time, the Order repeals several provisions of the Norms regarding simplified customs procedures.

OTHER REGULATIONS

ELECTRONIC ARCHIVES

We note the publication of Decision no. 1131/2008 of the National Authority for Communications (“**ANC**”) on the methodological rules for data center authorization (the “**Decision**”) ²¹. According to the Decision, data centers are secured areas endowed with computer technology and communication equipment used for reception, storage and transmission of data in electronic format. The Decision applies to data centers used by electronic archives administrators. The Decision sets forth the procedure and conditions for granting, suspending and withdrawing data center authorization decisions issued by ANC, as well as the contents, validity and effects of decisions for suspensions or withdrawals of the authorization.

ASSOCIATIONS AND FOUNDATIONS

We note the publication of Law no. 305/2008 amending Government Ordinance no. 26/2000 on associations and foundations²² (the “**Law**”). According to the Law, phrases or words which are likely to generate confusion with the name of public authorities or institutions of national or local interest may not be used as names of associations or foundations. Associations and foundations whose names conflict with the abovementioned provisions have the

obligation to have it modified within 6 months as of the coming into force of the Law, otherwise they may be subject to dissolution by court decision upon the request of any authority, institution or interested party.

MONEY LAUNDERING CONTROL

We note the publication of Government Decision no. 1599/2008 approving the Regulation for the organization and operation of the National Office for Prevention and Control of Money Laundering (the “**Office**”) ²³. The Office has legal personality, being organized and operating as a specialized body subordinated to the Government and under the coordination of the Prime-Minister through the Prime-Minister's Cabinet. The Office receives, reviews and processes information and notifies the relevant authorities as per the law or refers to a case *ex officio* when it becomes aware in any manner whatsoever of a suspicious transaction. The abovementioned Government Decision also regulates: (i) the attributions of the Office; (ii) the organization and operation of the Office; and (iii) the conditions for recruitment, employment, promotion and disciplinary liability of its personnel.

CULTURE

We bring to attention the publication of Government Decision no. 1675/2008 approving the National Program for conversion to digital format of national cultural resources and creation of the Romanian Digital Library (the “**Program**”) ²⁴. The Program is part of the European digital library – Europeana.eu project. The Program concerns the conversion to digital format and storage of cultural resources pertaining to audio-visual, written, mobile and fixed cultural patrimony as well as to archives. The funding of the Program shall be made from the State budget, reimbursable and non-reimbursable external grants, as well as from other sources. A Program implementation unit shall be established to ensure coordination of public acquisitions performed for the purpose of the Program.

PRIVATE PENSIONS

We note the publication of Decision no. 44/2008 of the Private Pensions Supervisory Commission approving Norm no. 24/2008 regarding the conditions for authorization and organization of assets and liabilities for private pensions funds management companies²⁵ (the “**Decision**”). The Decision specifies conditions for: (i) the

²⁰ Official Gazette, Part I, no. 888 of December 29, 2008.

²¹ Official Gazette, Part I, no. 861 of December 20, 2008.

²² Official Gazette, Part I, no. 855 of December 19, 2008.

²³ Official Gazette, Part I, no. 841 of December 15, 2008.

²⁴ Official Gazette, Part I, no. 855 of December 19, 2008.

²⁵ Official Gazette, Part I, no. 891 of December 29, 2008.

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authorization of pensions companies as private pensions funds management companies; (ii) take-over of the management of optional pensions funds by privately-managed pensions funds managers; (iii) separate organization and recording of assets and liabilities in accounting books kept by private pensions funds management companies.

INTELLECTUAL PROPERTY

We note the publication of Order no. 112/2008 of the State Office for Inventions and Trademarks approving the Instructions for submission of patent requests through electronic means²⁶ (the "**Order**"). According to the Order, patent requests may be submitted through electronic means by using the software program of the European Patent Office. Such program may be downloaded from the webpage of the State Office for Inventions and Trademarks. The following may be submitted through electronic means: (i) patent requests at national level; (ii) requests for opening the national stage of international requests; (iii) translations of European patent requests or of European patent streams in which Romania is the designated State or the State in which the extension of effects has been requested. Patent requests containing classified information may not be sent through electronic means, otherwise the person having ordered such transmission shall be held liable therefor.

SILVICULTURE

We bring to attention the publication of Government Emergency Ordinance no. 193/2008 amending and supplementing Art.37 and Art.39 of Law no. 46/2008 – the Forestry Code²⁷ (the "**Ordinance**"). Pursuant to the amendments operated further to the Ordinance, lands which are necessary to build or expand certain categories of projects may be permanently removed from the national forest fund, subject to ensuring compensation in respect thereof and without diminishing the surface area of the forest fund, and provided that financial liabilities have been paid in advance. Amongst the projects for the purpose of which lands may be taken

out from the national forest fund we note: (i) operation and exploitation of the following resources: coal, useful rocks, mineral aggregates, ores, mineral waters, sources of alternative energy, oil and natural gas; (ii) tourist structures which include tourist accommodation functions, religious sites, social, sporting and medical facilities, local interest hydro-technical structures and drinking water networks; (iii) communication networks and systems; (iv) repair and maintenance of oil, natural gas and electricity transportation networks. Temporary occupation of lands from the forest fund is permitted only for a pre-determined period of time and for the restrictive purposes provided by law.

SPORTS

We note the publication of Emergency Ordinance no. 150/2008 amending and supplementing Law no. 227/2006 on the prevention and elimination of doping in sports²⁸ (the "**Ordinance**"). The modifications operated further to the Ordinance refer, amongst others to: (i) re-definition of certain concepts within Law no. 227/2006; (ii) the attributions of the National Anti-Doping Agency (the "**Agency**"); (iii) the composition of the Agency's management board; (iv) financing the Agency's current and capital expenses; (v) management of laboratory test results; (vi) the right to a fair hearing and the right to confidentiality; (vii) the penalties inflicted in case of failure to comply with the relevant legal provisions in the field; (viii) circumstances that may lead to the increase of suspension time; (ix) obligations of national sporting structures and of the Romanian Olympic Committee of Sports.

HAZARDOUS SUBSTANCES

We bring to attention the publication of Government Decision no. 1408/2008 on classification, packaging, and labeling of hazardous substances²⁹ (the "**Decision**"). The Decision establishes the legal framework applicable to the classification, packaging and labeling of substances which are hazardous to humans and to the environment, in view of introducing them on the market. The Decision shall be enforced

by the following relevant authorities: the Ministry of Environment and Sustainable Development, the National Agency for Environmental Protection, the National Environmental Guard and the National Authority for Consumer Protection. Substances or derivatives thereof may not be introduced on the market unless they are packaged and labeled in compliance with the provisions of the Decision. Failure to comply with such legal provisions shall be deemed as an offence and shall be punished by fine within the limits set forth in the Decision. Several enactments shall be repealed on the effective date of the Decision, such as: (i) Government Decision no. 490/2002 approving the Methodological Norms for the application of Government Emergency Ordinance no. 200/2000 on the classification, labeling and packaging of hazardous substances and chemical products; and (ii) Government Decision no. 1300/2002 on notification of chemical substances.

LEGISLATION BRIEF

We note:

- The publication of Law no. 289/2008 on the ratification of the Protocol signed at Skopje on February 27, 2008 for amending the Agreement concluded between the Government of Romania and the Government of the Republic of Macedonia in respect of mutual promotion and protection of investments, signed in Bucharest on June 12, 2000³⁰.
- The publication of Law no. 290/2008 on the ratification of the Protocol signed in Bucharest on March 5, 2008 for amending the Agreement concluded between the Government of Romania and the Government of Qatar in respect of mutual promotion and protection of investments, signed in Bucharest on June 6, 1996³¹.
- At the same time, we bring to your attention the re-publication of:
- Law no. 182/2000 on the protection of the natural cultural patrimony.³²
- Government Decision no. 671/2003 on the conditions for introduction on the market and commissioning of non-automatic operation weighing devices³³.

²⁶ Official Gazette, Part I, no. 864 of December 22, 2008.

²⁷ Official Gazette, Part I, no. 825 of December 8, 2008.

²⁸ Official Gazette, Part I, no. 809 of December 3, 2008.

²⁹ Official Gazette, Part I, no. 813 of December 4, 2008.

³⁰ Official Gazette, Part I, no. 827 of December 9, 2008.

³¹ Official Gazette, Part I, no. 827 of December 9, 2008.

³² Official Gazette, Part I, no. 828 of December 9, 2008.

³³ Official Gazette, Part I, no. 840 of December 15, 2008

ECHR CASE LAW

The Judgment of the European Court of Human Right (“ECHR”) in the Case of Dumitrescu against Romania dated February 14, 2008 has been published³⁴ (the “**Judgment**”). The case originated in an application lodged by the claimant invoking the infringement of his ownership right due to a judgment of the national courts of law validating the sale of the claimant's real estate by the State to former tenants thereof, although it had been previously ascertained that the nationalization was illegal and that the State did not hold a valid title over the respective real estate. ECHR held that the application was admissible and ordered the State to return the real estate to the claimant and pay moral damages thereto as well any other amounts that might be due as taxes. When detailing the Judgment, ECHR noted that (i) the existence of the claimant's ownership right based on a final and irrevocable judgment of the Romanian courts of law was not conditioned upon additional formalities; (ii) the sale by the State of another person's asset to third parties who were in good-faith, even if it preceded the court's final acknowledgement of the ownership right held by such other person, represents an instance of ownership infringement; (iii) the State breached its positive obligation to take action in due course and in a consistent manner in respect of restitution or sale of certain real estate which it took possession of based on nationalization decrees, and the general uncertainty thus generated recoiled on the claimant who could not recover his asset although he had obtained

a final judgment ordering the State to return the asset in question.

ECHR judgment in the Case of Șerbanescu against Romania dated February 7, 2008 has been published³⁵. The case originated in an application lodged by the claimant with ECHR whereby the former invoked the infringement of his right to a fair trial and to the security of legal relations in connection with a litigation regarding the retrocession of a real estate based on Law no. 10/2000 on the legal regime of real estate abusively taken over by the State in the March 6, 1945 –December 22, 1989 period, as further amended. In support of the application, the claimant invoked the infringement of his right to a fair trial and within reasonable time for his litigation, as well as of his ownership right. In the case at hand, after the claimant had his ownership right over the relevant real estate acknowledged by a final and binding judgment, and after having proceeded to the settlement of the relevant levies, the High Court of Cassation and Justice cancelled the respective judgment and rendered a judgment against the claimant. ECHR held that: (i) in light of the principle of the security of legal relations, the claimant's right to a fair trial was infringed since a final solution in respect of a litigation cannot be resumed for debates; (ii) considering that the right acknowledged in favor of the claimant through the final judgment was not revocable, the claimant's ownership right was infringed, all the more so since the claimant had registered his right in the Land Book, and (iii) the Romanian State must return the real estate

to the claimant within 3 months as of the date when the judgment becomes final, under penalty of having to pay indemnification equivalent to the current value of the real estate.

ECHR Judgment in the Case of Tarik against Romania dated February 7, 2008 has been published³⁶. The case originated in an application lodged by the claimant with ECHR whereby the former invoked interference in the exercise of his ownership right over an apartment that had been returned to him by the State and which he could not use for a long period of time or collect rent in respect thereto. ECHR held that the claimant's ownership right had been infringed, since such right entails that any interference from public authorities must be in compliance with the law and not merely pursue a lawful purpose in concord with general interests. At the same time reasonable proportions must be maintained between the means used to reach a goal and the goal to be attained by any measure thus imposed by the State. ECHR held, *inter alia*, that: (i) Art.1 of Protocol no. 1 was infringed; (ii) the State must pay to the claimant the amount of EUR 8,000 as material and moral damages within three months as of the date when the judgment becomes final; (iii) starting with the expiry of the abovementioned term and until the said amount is paid, such amount shall be increased by simple interest, at a rate that is at least equal to that of the marginal credit facility of the Central European Bank valid in the relevant period, increased by three percent.

CONSTITUTIONAL COURT CASE LAW

We note the publication of Judgment no. 1325 of December 4, 2008³⁷ of the Constitutional Court (the “**Court**”), regarding the unconstitutional character of the provisions of Government Ordinance no. 137/2000 on the prevention of all forms of discrimination and penalties applicable thereto³⁸ (the “**Ordinance**”). The Court deemed that the provisions of the

Ordinance are not constitutional due to the fact that pursuant thereto it may be held that courts of law may cancel or refuse the enforcement of certain enactments having the force of law if such are deemed discriminatory, and may replace such enactments with rules generated judicially or with legal provisions that were not taken into account by the legislative authority

upon enactment of the acts deemed as discriminatory. The Court assessed that such provisions of the Ordinance have an unconstitutional character since the application thereof leads to a breach of (i) the principle of separations of powers within the State, and (i) the constitutional provision whereby Parliament is the sole legislative authority of the country.

³⁴ Official Gazette, Part I, no. 819 of December 5, 2008.

³⁵ Official Gazette, Part I, no. 886 of December 29, 2008.

³⁶ Official Gazette, Part I, no. 886 of December 29, 2008.

³⁷ Official Gazette, Part I, no. 872 of December 23, 2008.

³⁸ Official Gazette, Part I, no. 99 of February 8, 2000.

HCCJ CASE LAW

We bring to attention the publication of Judgment no. 6 of January 21, 2008 of the High Court of Cassation and Justice ("HCCJ")³⁹, for the examination of the appeal in the interest of the law filed by the general prosecutor of the Prosecutor's Office attached to the HCCJ in relation to the enforcement of the provisions of Art.237 para. (5) of Law no. 31/1990 on companies, as republished (the "Law") regarding the means whereby a judgment denying dissolution of a company may be challenged in court. In enforcing the provisions of the abovementioned article, the courts of law failed to agree upon a unitary standpoint. Thus, certain courts of law deemed that first appeals may be filed against judgments denying dissolution of a company based on Art.237 para. (1) whilst other courts of law deemed that such judgments may only be challenged through second appeals. HCCJ confirmed that judgments denying dissolution of a company may only be challenged through second appeal.

We bring to attention the publication of HCCJ Judgment no. 4 of January 21, 2008⁴⁰ approving the appeal in the interest of the law regarding the legal classification of the act of making inaccurate accounting registrations or omitting to make accounting registrations. Certain courts of law deemed that perpetrating the abovementioned acts entails the incidence of a real combination between (i) the offence of tax evasion provided in Art.9 para. (1) letter b) of Law no. 241/2005 on prevention and control of tax evasion, and (ii) the offence of intellectual

forgery provided at Art.43 of the Accountancy Law no. 82/1991. On the contrary, other courts of law deemed that failing to register commercial operations or revenues in accounting records, as well as registering fictitious expenses or operations in accounting documents or other legal documents can be deemed as part of the tax evasion offence, intellectual forgery being part of the complex offence of tax evasion. The Court assessed that the two offences are complementary and have a common final purpose namely that of ensuring the genuineness of fiscal statements, as well as that of preventing any actions that may affect the correct reflection of revenues, expenses and financial results in accounting records. Consequently, in case both said offences are perpetrated, the complex offence of tax evasion alone shall be maintained and not the combination of the two offences.

We note the publication of Judgment no. 8 of January 21, 2008 of HCCJ⁴¹ for the examination of the appeal in the interest of the law filed by the general prosecutor of the Prosecutor's Office attached to the HCCJ whereby the court was requested to conclude that one may only benefit from the impunity/penalty reduction causes provided by Art.10 of Law no. 241/2005 (the "Law") when he/she is on trial for the tax evasion offence provided under Art.9 of Law no. 241/2005. According to Art.10 of the Law, in a tax evasion case, during the criminal investigations phase or during the judicial phase, but before the first effective court hearing, the accused or, as the case may

be, the defendant may cover the damage he/she caused in full and as a result, the limits of the sentence provided by law for the offence perpetrated shall be reduced to half. The practice of the courts was not unitary as regards the application of the said impunity/penalty reduction case to situations generated by the perpetration of offences while the former law in this field (Law no. 87/1994 - currently repealed) was still in force but which are trialed after the coming into force of the Law. Thus, by combining the more favorable provisions of the two successive penal laws, certain courts of law deemed that the provisions of Art.10 also apply to offences provided under Law no. 87/1994. On the contrary, other courts of law deemed that in the abovementioned situation the defendant can benefit from the impunity/penalty reduction case only if by the enforcement of Art.13 of the Penal Code, he/she is judged for the tax evasion offence provided under Art.9 of the Law. The Court held that, in case of offences falling under the scope of Law no. 87/1994, if such were trialed after the coming into force of the Law, only defendants who were charged with the perpetration of a tax offence provided under Art.9 of the Law (by the application of the principle of enforcing the most favorable criminal law), may benefit from the said impunity/penalty reduction case.

MUŞAT & ASOCIAȚII

43 Aviatorilor Boulevard
1st District, Code 011853
Bucharest, ROMANIA

Tel: (40-21) 202.59.00
Fax: (40-21) 223.39.57 / 223.04.95

Email: general@musat.ro

Website: www.musat.ro

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

one of the attorneys indicated below:

Gelu Titus Maravela
gelum@musat.ro; tel: 202 59 13

Miruna Suci
mirunas@musat.ro; tel: 202 59 05

Dominic Alexandru Morega
dominicm@musat.ro; tel: 202 59 00

³⁹ Official Gazette, Part I, no. 817 of December 5, 2008.

⁴⁰ Official Gazette, Part I, no. 868 of December 22, 2008.

⁴¹ Official Gazette, Part I, no. 866 of December 22, 2008.