

LEGAL NEWSLETTER

3 / 2009

M&A EVENTS

In line with its tradition of over 18 years of supporting and encouraging through scholarships, internships and sponsorship talented young lawyers at the dawn of their legal career, Musat & Associates ensured the participation of a team of three law students of Nicolae Titulescu University in the "Arbitration Moot Court" international contest organized by Goethe University in Frankfurt during the period 4-6 March 2009. Besides the professional training and the sponsorship granted to such team, Muşat & Associates was among the main sponsors of such event, along with other companies and major law firms in Europe. "Such contests represent a genuine chance for students to measure their forces in an international law case in the field of foreign investment protection with young people from other countries and, for those who reach the finals, to put forward their arguments before an arbitral tribunal formed of experts of the Arbitration Courts in Washington (ICSID) and London. The foreign investment protection is one of the most innovative, interest-raising branches of the international law, and the participation in such contest shall grant the three students an extremely valuable practical perspective on the dispute settlement mechanisms. We are pleased to support them in this contest, offering them the

chance to get involved in a major scale international project and to live a remarkable professional experience", says Ion Dragne, Deputy Senior Partner with Muşat & Associates. Along with other 27 student teams from all over the world, the three Romanian students got involved in the settlement of the first phase of an arbitral dispute performed according to the ICSID rules (International Centre for Settlement of Investment Disputes), i.e. the settlement of the objections regarding the competence of the Center and of the Arbitral Tribunal. This exercise tested and enriched their knowledge in the field of arbitral procedure, international law and ICSID practice, as well as of other international authorities in charge with the settlement of disputes. This year, the simulated lawsuit contest in Frankfurt brought forward a case of foreign investment protection and marine law, based on a real case which took place during the United States civil war. Musat & Associates' expertise in the field of international arbitrations includes numerous disputes settled or pending settlement by the arbitral tribunals organized under the patronage of ICSID (Washington) and of the International Chamber of Commerce (Paris), as well as by the ad-hoc Arbitral Tribunals, amounting to an aggregate of over 1 billion Euros only in the past three

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years. Recently, the firm has obtained the first victory of a private investor over the Romanian State before an international arbitration court (ICSID - Washington), which, for the first time ruled, in respect of Romania, that the abrogation/annulment of the subsidies granted to foreign investments is likely to cause prejudices to the investors, and a claim for remedy of such prejudices is, in principle, admissible before ICSID. Previously, Muşat & Associates acted in favor of the Romanian State, and was successful in a litigation initiated by Noble Ventures against the State, before the same ICSID, in relation to the Steel Plant in Resita.

STIMULATION OF INVESTMENTS

We bring to your attention the publication of Law No. 43/2009 approving Government Emergency Ordinance No. 72/2008 on the authorization of the Ministry of Agriculture and Rural Development to conclude internal

legal undertakings in 2008 in view of ensuring certain financial measures for the enforcement of the provisions of Law No. 231/2005 on the stimulation of investments in agriculture, food industry, forestry, fish

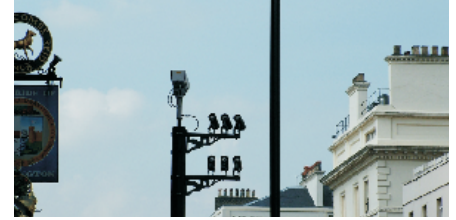
breeding, as well as in non-agricultural activities¹.

¹ Official Gazette, Part I, No. 171 of March 19, 2009.

PROTECTION OF PERSONAL DATA

Please note the publication of Decision No. 11/2009 of the National Authority for Supervision of Personal Data Processing regarding the establishment of the categories of personal data processing operations, likely to present special risks for people's rights and liberties (the

"Decision")². According to the Decision, the personal data processing presenting special risks shall be notified to the Authority at least 30 days prior to commencement and requires the performance of the prior control.



OTHER REGULATIONS

ASSOCIATIONS AND FOUNDATIONS

Please note the publication of Government Emergency Ordinance No. 16/2009 (the **"Ordinance"**)³ on the abrogation of art. II of Law No. 305/2008⁴ amending Government Ordinance No. 26/2000 on associations and foundations⁵. The ordinance abrogates the legal provision according to which the associations and foundations were under the obligation to change their names if such were likely to be mistaken for the names of certain public authorities or institutions of national or local interest, at the request of any concerned authority, institution or person within 6 months, subject to the sanction of being dissolved.

CONSTRUCTIONS

Please note the publication of Government Emergency Ordinance No. 18/2009 on the increase of power performance of blocks of flats (the **"Ordinance"**)⁶. The Ordinance establishes the intervention works for heat insulation of the blocks built according to designs made in the period 1950-1990, the necessary steps for the completion of the works, the funding modality thereof, and the obligations and liabilities of the public administration authorities and of the owners' associations.

PUBLIC INTEREST SERVICES

We bring to your attention the publication of Order No. 8/2009 of the Ministry of Administration and Interior on the approval of the Organization and Operation Regulation of the Department for Services of General Interest⁷. The general objective of such institution is the development of the public utilities community services field, as well as the modernization and development of the related technical and public service infrastructure, according to the EU norms.

SOCIAL PROTECTION

Please note the publication of Government Emergency Ordinance No. 28/2009 on the regulation of certain social protection measures (the **"Ordinance"**)⁸. Among the measures established by the Ordinance: the extension of the period during which unemployment benefits are granted, the employer's and employees' exemption from the payment of social insurance contributions throughout the temporary interruption of the activity, the regulation of sector committees as social dialogue institutions of public utility.

LEGISLATIVE BRIEFING

Please note the publication of:

- Government Decision No. 192/2009 amending and supplementing the Methodological Norms for the application of Law No. 571/2003 on the Fiscal Code, as approved by Government Decision No. 44/2004⁹
- Government Emergency Ordinance No. 19/2009 on certain measures in the field of legislation on public procurements¹⁰
- Order No. 2/2009 issued by the National Bank of Romania supplementing NBR Order No. 12/2007 on the reporting of the minimum capital requirements for credit institutions¹¹
- NBR Regulation No. 5/2009 amending NBR Regulation No. 1/2008 on the modifications of the status of credit institutions, Romanian legal entities, and of the Romanian branches of the credit institutions in third-party states¹²
- NBR Regulation No. 4/2009 amending BR Regulation No. 1/2007 on the authorization of credit institutions, Romanian legal entities, and of the Romanian branches of the credit institutions in third-party states¹³

- Order No. 15/2009 issued by the National Securities Commission approving Regulation No. 2/2009 on the procedural rules and criteria applicable to the prudential assessment of acquisitions and increases of participations in a financial investment services company¹⁴
- Decision No. 10/2009 issued by the National Authority for Supervision of Personal Data Processing on the establishment of an authorization template for the transfer abroad of personal data pursuant to art. 29 para. (4) of Law No. 677/2001 for the protection of persons with regard to personal data processing and the free circulation of such data¹⁵
- Government Decision No. 112/2009 on the organization and operation of the National Environmental Guard¹⁶
- Government Decision No. 84/2009 on the organization and operation of the National Authority for Consumers' Protection¹⁷
- Law No. 49/2009 on the approval of Government Emergency Ordinance No. 102/2008 amending and supplementing Law No. 273/2004 on the legal regime of adoption¹⁸
- Law No. 38/2009 on the approval of Government Emergency Ordinance No. 60/2008 amending and supplementing Government Emergency Ordinance No. 79/2002 on the general framework for regulation of communications¹⁹

Please note the publication of:

- Government Ordinance No. 4/2007 regulating the modality of and conditions for capitalizing the assets transferred, according to law, to the private property of the state²⁰

² Official Gazette, Part I, No. 155 of March 12, 2009.

³ Official Gazette, Part I, No. 143 of March 9, 2009.

⁴ Monitorul Oficial, Partea I, nr. 855 din 19 decembrie 2008.

⁵ Official Gazette, Part I, No. 39 of January 31, 2001.

⁶ Official Gazette, Part I, No. 155 of March 12, 2009.

⁷ Official Gazette, Part I, No. 179 of March 23, 2009.

⁸ Official Gazette, Part I, No. 186 of March 25, 2009.

⁹ Official Gazette, Part I, No. 143 of March 9, 2009.

¹⁰ Official Gazette, Part I, No. 156 of March 12, 2009.

¹¹ Official Gazette, Part I, No. 187 of March 25, 2009.

¹² Official Gazette, Part I, No. 180 of March 23, 2009.

¹³ Official Gazette, Part I, No. 180 of March 23, 2009.

¹⁴ Official Gazette, Part I, No. 183 of March 24, 2009.

¹⁵ Official Gazette, Part I, No. 149 of March 10, 2009.

¹⁶ Official Gazette, Part I, No. 128 of March 2, 2009.

¹⁷ Official Gazette, Part I, No. 182 of March 24, 2009.

¹⁸ Official Gazette, Part I, No. 190 of March 26, 2009.

¹⁹ Official Gazette, Part I, No. 182 of March 24, 2009.

²⁰ Official Gazette, Part I, No. 195 of March 27, 2009.

ECHR CASE LAW

We bring to your attention the publication of the Decision of the European Court for Human Rights („ECHR”) of 13 January 2009 in the Faimblat versus Romania case²¹. The plaintiffs filed a claim with ECHR regarding the breach of the access right to a court further to their claim being rejected as inadmissible on the ground that they failed to completely fulfill the procedure provided

by Law No. 10/2001. ECHR stated that: (i) the restriction of the access to a court by establishing a prior procedure must have a legitimate purpose and observe the proportionality between the used means and the pursued purpose; (ii) the defendant state must take the necessary legislative measures to ensure that the claims for restitution of the immovables abusively

taken over are finally settled by the authorities within reasonable terms, and the legal obstacles regarding the enforcement thereof are removed. For these considerations, ECHR ordered that the Romanian state pay moral damages and court expenses.

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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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²¹ Official Gazette, Part I, No. 141 of March 6, 2009.