

## Chapter II

# Labor and social security

## 1. General issues

The employment sector has faced substantial changes in Romania, but at quite a slow pace. It took 13 years for the regulations containing principles of employment dated 1972, to be finally repealed and a new legal framework enacted. The new Labor Code came into force on 1<sup>st</sup> March, 2003, gathering under the same umbrella the principles of employment relationship, employment contracts, labor and rest, labor protection and health, as well as those related to trade unions, employers' associations, labor conflicts. The Labor Code is meant as a framework regulation, designed both to cover the new labor relations and to align the legal framework to the EU legislative system. Additionally to the enactment of the new Labor Code, social and labor security are provided for as distinct items in the Governing Program adopted by the Romanian Government for the period 2005-2008. Amongst the amendments operated in this sector, one may reckon regulations concerning the establishment and functioning of the insurance fund for labor accidents and professional diseases, wages suretyship funds (although not yet functional) and a slight decrease of the contributions to certain social security funds.

## 2. Main regulations

- The Labor Code, approved by Law no. 53/2003 ("Labor Code");
- Law no. 130/1996 on the collective bargaining agreement, as further amended ("Law no. 130/1996");
- Law no. 168/1999 on labor conflicts, as further amended ("Law no. 168/1999");
- Government Emergency Ordinance no. 56/2007 on employment and secondment of foreigners on the Romanian territory, as further amended ("GEO no. 56/2007");
- Law no. 67/2006 on the protection of the employees' rights in case of transfer of undertakings, of units or part of those ("Law no. 67/2006").

## 3. Individual Labor Contract

### 3.1. Form of the Individual Labor Contract

The individual labor contract is concluded based on the parties' mutual consent, recorded in writing in Romanian language. The obligation to conclude individual labor contracts is incumbent on the employer.

Should the individual labor contract not be concluded in writing, it will be considered as having been executed for an unlimited period of time and hence the parties may prove the contractual provisions and the work rendered by any means of evidence.

## 3.2. Entering the labor contract

### 3.2.1. Prior information before entering the labor contract

Before concluding or amending any individual labor contract, the employer must inform the applicant or the employee, as the case may be, on the general provisions he intends to insert/amend in the contract, such as: the parties' identity, the work place details, the employer's residence or headquarters, risks of work, contract duration, position/occupation, as per the Romanian Code of Jobs Classification, terms and conditions of the prior notice to be served by the contracting parties, the basic salary, the applicable collective bargaining agreement, etc.

Any amendments of the above-mentioned elements shall involve execution of an addendum to the contract within 15 days from the written notification of the employee. Should the employer fail to inform the employee, the employee will be entitled to notify the competent legal court within 30 days and to request recovery of the damages incurred as a consequence of the employer's breach of its information obligation.

### 3.2.2. Probation period

During the execution of the labor contract, only one probation period may be established, that shall not exceed (i) 90 calendar days for management positions, (ii) 30 calendar days for executive positions, (iii) 6 months for the graduates of educational institutes when they make their début in their line of work and (iv) 5 calendar days for unskilled workers. This probation period is considered length of service.

## 3.3. Observance of the minimum rights

According to art. 11 of the Labor Code, the provisions of the individual labor contract may not be contrary or grant rights in favor of the employee below the minimum level established by the relevant legislation or by the collective bargaining agreement.

## 3.4. Special types of individual labor contracts

The Labor Code provides for the following types of individual labor contracts:

- a) labor contract for a determined period of time:
  - (i) may be concluded only under the terms expressly provided by law, for a maximum duration of 24 months and may be renewed if not exceeding the 24 months limit;
  - (ii) the parties may conclude maximum 3 successive individual labor contracts, but only within the 24 months limit;
  - (iii) upon contract cessation, employers will be bound to inform the employees (by notice placed on the employer's premises) on the any vacancies existing in the company, in order to conclude a labor contract for an unlimited period, corresponding to their professional skills; the aforementioned notice must be also transmitted to the trade union/ employees' representatives.
- b) temporary labor contract:
  - (i) it implies execution of the labour contract with a temporary labor agent and not with the final labor user;
  - (ii) it is concluded for a duration corresponding to the assignment provided in the

contract, but not exceeding 12 months, and may only be renewed once, the aggregate duration not exceeding 18 months;

- (iii) in between two assignments, the temporary employee shall remain at the disposal of the temporary labor agent and will receive a salary paid by the latter, which cannot be less than the national average gross salary;
  - (iv) after finishing his/her assignment, the temporary employee may be employed by the user;
  - (v) the salary received by the temporary employee during such assignment may not be less than the salary received by the user's employees, performing the same or a similar job.
- c) part-time individual labor contract:
- (i) it implies shorter working hours than the normal work hours;
  - (ii) the employer is bound to inform in due time (by a notice posted on its premises) the vacation of any part-time or full-time jobs, in order to ease the transfers from full-time jobs to part-time jobs and vice versa; the aforementioned notice must be also transmitted to the trade union/ employees' representatives.
- d) the individual labor contract for home work:
- (i) it implies the performance by the employee of his/her specific work tasks at his/her home, he/she having the right to establish his/her own working timeframe;
  - (ii) the employer has the right to check the employee's activity, according to the terms stipulated in the contract.
- e) Apprenticeship contract:
- (i) is concluded for a determined period of time, ranging between 6 months and 3 years;
  - (ii) the employer shall be authorized by Ministry of Labor, Family and Equal Opportunities;
  - (iii) the apprentice attends vocational training and works under the employer's authority.

### 3.5. Special provisions

After the execution of individual labor contracts, the parties may also negotiate certain specific clauses such as the professional training clause, non-competition clause, mobility clause or confidentiality.

#### 3.5.1. Non-competition clause

The non-competition clause implies the employee's obligation, after the cessation of the individual labor contract, not to carry out any activity in his/her own interest or in interest of a third party, which may compete with the activity performed for the benefit of his/her employer, nor to perform activities for his/her employer's competitors.

This clause shall produce effects for maximum 2 years as of the contract's cessation, provided that: (i) the individual labor contract expressly mentions the activities that are forbidden to the

employee after the cessation of the contract (ii) the employer grants an additional indemnification for the non-competition period, to be negotiated by the parties, amounting to at least 50 % of the employee's average gross salary over the last 6 months prior the cessation of the contract or, in case of length of the contract is less than 6 months, of the employee's average gross salary over the entire duration of the contract. (iii) the contract provides the duration for which the employee may not carry out the activities that are forbidden, the third parties in favor of which the aforesaid activities are forbidden and the geographic area where the employee may be in competition with the employer.

From the employer's point of view, the non-competition indemnification shall be considered a deductible expense.

In certain cases of lawful cessation of the individual labor contract or if the same ceases for reasons not related to the employee, the non-competition clause may not produce any effects after termination of the individual labor contract.

The non-competition clause may not however result in totally preventing the employee from exercising his/her profession or vocation.

If the employee fails to observe the non-competition clause, he/she may be bound to pay back the additional indemnification that he/she has received, along with so caused damages to the employer.

### **3.5.2. Mobility clause**

Under the mobility clause, the parties may agree that, due to the work particularities, the employee is not bound to perform his/her job tasks within a permanent location. Thus, the employee may benefit from additional allowances, in cash or in kind.

### **3.5.3. Confidentiality clause**

Under the confidentiality clause, the parties may agree that, for the entire duration of the individual labor contract and after its cessation, they will not disclose any data or information they had access while the contract was in force, according to the terms of the internal regulation, of the collective bargaining agreements or of the individual labor contracts. Failure to observe this clause by any of the parties will result in the defaulting party's obligation to pay corresponding damages.

## **3.6. Salaries**

The salary includes basic salary, indemnifications, bonuses, as well as other additional payments, and it is paid prior to any other debts of the employer.

Salaries level is based on individual and/or collective negotiations between the employer and employees or their representatives.

The employer has the obligation to take all the necessary measures to ensure salary confidentiality.

The employer may not negotiate and establish basic salaries under individual labor contracts, below the national minimum gross salary.

Beginning on 1 October 2008, the national minimum gross salary was established at RON 540/month, for full time jobs, i.e. an average of 170 hours/month, representing RON 3.176/hour. Beginning on 1<sup>st</sup> of January 2009, the national minimum gross salary shall be established at RON 600/month, for full time jobs, i.e. an average of 170 hours/month, representing RON 3.529/hour.

The payment of salaries is secured by the employer's obligation to contribute to the Security Fund for salary receivables payment, resulting from the individual labor contracts.

No withholdings as damages caused to the employer may be made from the employees' salary, unless the employee's debt is outstanding and payable and was considered as such by a final and irrevocable judgment. Such salary withholdings, cumulated, cannot exceed each month half of the employee's net salary.

### **3.7. Working hours**

The normal working schedule is of 8 hours/day or 40 hours/week in average. For young people under the age of 18, the normal work time is 6 hours/day and 30 hours/week. Depending on the work features, employees may opt for an irregular distribution of the working hours, yet with the strict observance of the normal working time of 40 hours/week. The maximum legal working time may not exceed 48 hours/week, including overtime work. As an exception, the working time may exceed 48 hours/week, provided that the average of working hours for a 3-month period does not exceed 48 hours/week.

For certain jobs, whereby the employee performs hard or dangerous work (such as mining) the work time may not exceed 6 hours/day, with full salary rights.

The employer may establish individualized, flexible working hours, with the employee's consent or upon the request of an employee, if such a possibility is stipulated in the collective bargaining agreement applicable at the employer's level, or, in the absence of such stipulations, in the internal regulations.

### **3.8. Paid leaves**

#### **3.8.1. Annual rest leave**

The minimum annual rest leave duration is 21 working days. Employees working in hard, dangerous or harmful conditions, disabled individuals or young people under the age of 18 will benefit from an additional annual rest leave of at least 3 working days. Blind individuals benefit from an additional annual rest leave of at least 6 working days.

The right to annual rest leave may not be subject of any waiver, assignment or limitation.

The effective period of the annual rest leave is established by the applicable collective bargaining agreement and is stipulated in the individual labor contract. Such period is awarded proportionally to the activity carried out by employee during a calendar year. However, the part-time employees benefit by the same annual rest leave as the employees who work full-time.

The non-working legal holidays, as well as the paid days off, stipulated in the applicable collective bargaining agreement are not included in the annual rest leave.

As a general rule the annual rest leave shall be taken every year. Employers are bound to grant annual rest leave, until the end of the following year, to all employees who did not entirely benefit from the leaves they were entitled to in a calendar year. Compensation in cash of the untaken annual rest leave is only allowed in case of individual labor contract termination.

During the period of the annual rest leave the employee shall benefit of an indemnity, which may not be lower than his/ her basic salary, indemnities and permanent bonuses due for that period. The indemnity for annual rest leave represents the daily average of the salary related payments of the last three months prior to the month when the leave is completed, multiplied by the number of annual rest leave days and it will be paid 5 days before the employee's departure.

### 3.8.2. Other paid leaves

The Labor Code grants the employees the right to paid days off for certain family events or for other particular situations.

### 3.9. Suspension of the individual labor contract

The suspension of the individual labor contract may occur lawfully, pursuant to parties' mutual consent or at one of the parties' initiative.

The individual labor contract is lawfully suspended, inter alia, during maternity leave and temporary working incapacity leave.

The contract may be suspended further to the employee's initiative for raising children under the age of 2, for paternal leave, for participating to strikes and other situations expressly stipulated by law.

The employer may have the initiative to suspend the individual labor contract, for example, during the employer's preliminary disciplinary investigation or as a disciplinary sanction, as well as during the temporary interruption of its activity due to economical or technological reasons.

During the temporary interruption of the employer's activity, the employees are entitled to compensations amounting to at least 75% of their basic salary, while being at their employer's disposal for the period of work interruption.

### 3.10. Termination of individual labor contract

The individual labor contract may cease either lawfully, pursuant to parties' mutual consent, on the date agreed by the same, or further to the one of the parties' initiative, under the terms and conditions expressly provided by law.

#### 3.10.1. Contract lawful termination

The individual labor contract lawfully ceases in certain cases, expressly provided by the Labor Code, among which:

- (i) on the employee's date of death;
- (ii) on the date the decision of retirement for full age, in-advance retirement, partial in-advance retirement, or retirement due to disability of the employee is communicated, under the law;
- (iii) when the court grants the application for reinstatement in the position previously held by an employee illegally dismissed, commencing on the date the judgment becomes final. The employer's failure to observe the reinstatement judgment constitutes an infringement and it is punished with imprisonment or fine;
- (iv) on the expiry date of the individual labor contract for a determined period of time.

#### 3.10.2. Dismissal

##### a) *Legal concept of dismissal*

The dismissal represents the cessation of the individual labor contract based on the employer's initiative and may occur for reasons related to the employee, or for reasons not related to the employee.

The employees may not be dismissed, among others, in the following situations:

- (i) during the employee's temporary working incapacity;
- (ii) during pregnancy, if the employer was aware of the woman's condition before her dismissal;
- (iii) during maternity leave;
- (iv) during military service;
- (v) during annual paid leave, etc.

These cases are not applicable when the employee is dismissed further to the employer's judicial reorganization or bankruptcy, in accordance with the law.

The dismissed individuals will receive, as a rule, a prior dismissal notice of minimum 20 working days.

*b) Dismissal for reasons related to the employee*

The employer may resolve the employee's dismissal for reasons related to the employee in the following cases:

- (i) if the employee perpetrates a severe infringement or repeated infringements of labor discipline;
- (ii) in case the employee is in preventive arrest for more than 30 days;
- (iii) in case the employee is found out to have a physical or psychic inability;
- (iv) if the employee is professionally unfit for the job.
- (v) if the employee meets the retirement conditions and does not request the retirement, in accordance with the law.

Under items (ii) to (iv) the employer is bound to issue the dismissal decision within 30 calendar days as of the date the dismissal grounds are acknowledged.

*c) Dismissal for reasons not related to the employee*

This type of dismissal is determined by the cancellation of the position held by the employee for one or more reasons not pertaining to the employee..

### **3.10.3. Collective dismissal**

The notion of collective dismissal or redundancy was initially regulated by the Emergency Government Ordinance no. 98/1999 on social protection of person's subject of redundancy, as further amended and completed.

Beginning with March 1<sup>st</sup>, 2003, the provisions of the new Labor Code on redundancy came into force, which differ from the previously instituted rules certain respects as the minimum number of dismissed persons, notification terms and security measures. Consequently, the provisions of EGO no. 98/1999 complete the provisions of the Labor Code and, if contrary to such provisions, they are considered as repealed.

*a) Notion*

The collective dismissal consists in dismissing, for reasons not related to employees, within a 30-day period, of at least 10 employees (for companies with 20-99 employees), 10% of the employees (for companies with 100-299 employees), 30 employees (for companies with at least 300 persons).

b) *Procedure*

Collective dismissal involves consultations with the trade unions/ employees' representatives on the methods and means to avoid the collective dismissals or to reduce the number of dismissed employees and to mitigate the consequences thereof and prior notifications to the trade unions/employees' representatives, the territorial labor inspectorate and the territorial agency for professional occupation and training, on the intention of collective dismissal and the social protection measures taken. The aforementioned notifications has to provide, *inter alia*, the number and categories of employees to be dismissed, measures for mitigating the dismissal consequences and compensatory payments to be granted to dismissed employees, the date starting from or the period within which the dismissal shall be performed. The dismissal decision is individual and the serving of notices is mandatory.

c) *Limitations in case of reactivation of the cancelled jobs*

Employers who resolve collective dismissals may not employ new persons for the positions previously held by the dismissed employees for a 9-month period from the date of their dismissal, unless the dismissed employees are previously informed. In case the dismissed employees, entitled to be reinstated in their jobs, refuse to be reinstated, the employer may employ other persons for the vacant jobs.

d) *Social protection measures for the persons whose individual labor contracts are terminated further to the collective dismissals*

Employees with individual contracts for unlimited durations, who are laid off through collective dismissals, during the company restructuring or reorganization processes, during partial or total closure of the activity or during the privatization or liquidation, may benefit of social protection measures regulated by EGO no. 98/1999.

The social protection measures afforded by EGO no. 98/1999 consist of compensatory payments, collective pre-dismissal services (counseling, informing, vocational orientation, placement) and active measures meant for limiting unemployment. At the same time, companies operating collective lay offs within restructuring programs may request and receive funding to support measures for economic revival.

It is worth mentioning that such measures (compensatory payments) mainly aim at State-owned companies, nominated by Government decision. Nevertheless, the State cannot afford to pay compensatory salaries in all cases.

The amounts granted as compensatory payments will be established according to the law, depending on the employee's seniority. In order to receive compensatory payments, the employees should have worked for at least 6 months with that employer within the last 12 months before their dismissal.

As for private employers, the parties shall negotiate the amount of compensatory payments, depending on company's possibilities. Nonetheless, according to Collective bargaining agreement at national level for 2007 – 2010, in case of dismissal for reasons not related to the employee, such compensations cannot be lower than one monthly salary or the compensatory payments provided by the collective bargaining agreement at branch/company level.

e) *Illegal dismissals*

In case of illegal or ungrounded dismissal, the Court may invalidate such dismissal, bind the employer to pay damages equal to the employee's updated salary, together with any other rights the employee would have benefited from, should dismissal not have occurred and, upon, the employee's request, to reintegrate him on the position previously held.

### 3.10.4. Resignation

The resignation represents the unilateral deliberate act of the employee who, by means of a written notification, informs the employer on the termination of his individual labor contract, after the completion of a prior notice term. The employee is not bound to justify such resignation.

The prior notice term will be established by the parties in the contract or be subject to the provisions of the applicable collective labor contracts, and cannot exceed 15 calendar days for the employees in execution positions, and 30 calendar days for management positions.

In case the employer breaches its obligations provided in the individual labor contract, the employee is free to resign without serving prior notice to the employer.

### 3.11. Social protection measures for employees, in case of transfer of business

The transfer of business is regulated by the Labor Code and by Law no. 67/2006. The latter entered into force on January 1, 2007 and transposes the Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

Under Law no. 67/2006, the transfer is defined as the passing of undertaking, of unit or part of those from the transferor's ownership into the ownership of the transferee as a result of an assignment or merger, having as purpose the continuation of the activity.

Both the Labor Code and Law no. 67/2006 provides that the rights and obligations of the transferor arising from the individual labor contracts and from the applicable collective labor contract existing on the undertaking transfer date, shall be fully transferred to the transferee.

The employees' rights and obligations resulting from the collective labor contract, in force on the date of the transfer, cannot be unilaterally amended for the entire validity term of such contract, yet, it can be re-negotiated with the new owner, but not earlier than one year as of the transfer date.

If the transferred business doesn't keep its autonomy after the transfer and the transferee's collective labor contract is more favorable to the transferred employees, it shall apply to the transferred employees.

Law no. 67/2006 requires prior consultations with the trade unions/employees representatives of the transferor and transferee and the notification in writing of the latter (or the notification of the transferor and transferee employees, if the trade unions or employees representatives are not established) with at least 30 days prior to the transfer date, on the following: (i) the transfer date or the proposed transfer date, (ii) the reasons for the transfer, (iii) the legal, economic and social consequences of the transfer for the employees, (iv) any measures to be taken with respect to the employees, (v) work conditions and work framing conditions.

Law no. 67/2006 provides also an essential interdiction, namely that the transfer of undertaking cannot represent reason for collective or individual dismissal of the employees by the transferor or by the transferee. It is important to outline that the transferor may not dismiss its employees in order to facilitate the transfer of undertaking. If the transfer of undertaking implies a substantial modification of the work conditions to the employees' detriment, the employer is responsible for the termination of the individual labor contract.

## 4. Employees' liability

### 4.1. Internal regulations

Starting with March 1<sup>st</sup>, 2003, the Labor Code binds each employer to adopt an internal regulation, without however regulating applicable sanctions in case of failure to observe such obligation. The internal regulation covers issues such as: hygiene, labor protection and security, rights and obligations for both the employer and the employees, labor discipline, etc.

The internal regulation should be acknowledged to the employees by the employer and is binding on the employees on the date of their acknowledgement thereof. The internal regulation should be displayed within the employer's premises, and any interested employee may approach the employer on any provisions thereof, provided that he/she proves that the regulation infringes his/her rights.

### 4.2. Disciplinary liability

The employer has the disciplinary prerogative, being legally entitled to apply sanctions to any employee, whenever he/she finds out that such employee breaches his/her duties.

Disciplinary infringements are labor related deeds consisting in faulty actions or omissions of the employee, in breach with the legal provisions, the internal regulation, the individual labor contract or the applicable collective labor contract, his/her superiors' orders.

The employer will establish the applicable disciplinary sanction, well balanced with the disciplinary infringement committed by the employee.

The employer may apply the following disciplinary sanctions:

- a) written warning;
- b) suspension of the individual labor contract for not more than 10 working days;
- c) demotion from his/her current position and the reduction of his/her salary in accordance with the new position, for maximum 60 days;
- d) basic salary reduction by 5-10% for 1 to 3 months;
- e) disciplinary termination of the individual labor contract.

Subject to absolute voidance, no disciplinary sanction may be imposed unless a prior disciplinary investigation is performed. Therefore, the employee will be summoned in writing by the person empowered by the employer. The employees' failure to answer such summons may lead to the sanction being enforced without prior disciplinary investigation.

During the prior disciplinary investigation, the employee may formulate and sustain any defense in his/her favor, and may be assisted by a representative of the union he/she is part of.

The employer will impose the application of the disciplinary sanction by decision issued in writing, within 30 calendar days as of the date the employee was informed on the disciplinary infringement, but no later than 6 months after the date of perpetrating such deed.

## 5. Foreigners working in Romania

The citizens of the European Union member states (EU citizens) can enter and have a residence right in Romania if their stay is no longer than three months, without the requirement of other additional conditions. For longer stays, the EU citizens who work in Romania need registration certificates that are issued by the Romanian Immigration Office and that are valid for the period of the individual labor contract.

Non-EEA citizens and non-EU citizens may work in Romania, provided that they obtain a work permit from the Romanian Immigration Office.

The work permit may be issued, upon request, to non-EEA citizens and non-EU citizens who meet the requirements provided by law regarding the foreigners' regime, the integration to employment and the secondment on the Romanian territory.

The work permit is issued by the Romanian Immigration Office, being granted for a period up to one year and being automatically extended for successive periods of up to one year until the termination of the individual labor contract.

Among non-EEA citizens and non-EU citizens who can be employed in Romania without a work permit, are those who:

- a) have legally established their permanent residence on the Romanian territory;
- b) have acquired a form of protection in Romania;
- c) whose free access to the Romanian labor market is regulated by agreements, treaties or bilateral understandings concluded by Romania with other states;
- d) perform teaching, scientific and other specific temporary activities in Romanian education institutions, based on reciprocal agreements, the highly skilled personnel and the foreigners that perform artistic activities in Romanian cultural institution based on the order of the minister;
- e) are going to perform on Romanian territory temporary activities requested by ministries or any other public institutions;
- f) are appointed head of subsidiaries, representative offices or branches of a foreigner company on Romanian territory;
- g) are family members of Romanian citizens;
- h) are seconded in Romania and works based on a work permit within EEA or EU member state.

The number of work permits issued are limited annually by Government decision, depending on the concrete status of the Romanian labor market and the policy in the field of labor force migration. For 2008, the Government established a number of 10.000 work permits to be issued to foreign citizens that intend to work on Romanian territory.

## 6. Collective bargaining contract

### 6.1. Negotiation obligation

The employer is bound to initiate collective negotiations, except when the number of its employees is less than 21. In case the employer doesn't initiate the collective negotiations, these are initiated upon the union request or of the employee representatives. Employer's failure by to meet its negotiation obligation or refusal to answer the negotiation invitation by the

employees represents misdemeanor by administrative fines.

Negotiations cannot exceed 60 days. A new collective negotiation may only be initiated 12 months after the previous negotiation, in case it does not end in the execution of a collective bargaining contract, or from the effective date of the collective bargaining contract concluded further to such negotiation.

## **6.2. Execution of collective bargaining contract**

The collective bargaining contract is concluded for a determined period of time, which cannot be less than 12 months, or for a period corresponding to a determined assignment. Upon the expiration of the contract's term, the parties may decide on its extension.

If, further to negotiations, no agreement is reached, the former contract will not be automatically extended, instead, the collective bargaining contract concluded at superior level will apply.

## **6.3. Contract content and registration**

The collective bargaining contract may not contain inferior rights to those established through the collective bargaining contract concluded at superior level.

Upon the collective bargaining contract execution, the legal provisions relating to employee's rights have a minimal character.

The collective bargaining contract concluded at the company branch or at national level will be submitted to and registered with the Ministry of Labor, Family and Equal Opportunities.

## **6.4. Contract amendment, suspension and termination**

The provisions of the collective bargaining contract may be amended during the contract's performance whenever the parties agree on such amendments. Any amendments of the collective bargaining contract shall be applicable starting from their registration date, or upon a subsequent date, depending on the parties' agreement.

The collective bargaining contract is suspended during strikes, if the employees participating in the strike may no longer continue their activity.

The collective bargaining collective will cease:

- a) upon expiry of its term or upon achievement of the assignment the contract was signed for, if the parties fail to agree upon its extension;
- b) upon dissolution or liquidation of the employer;
- c) pursuant to the parties' agreement.

The collective bargaining contract may be suspended based on the parties' agreement. The collective bargaining contract termination or suspension will be notified, within 5 days, to the authority the contract was submitted to for registration.

# **7. Labor associations**

## **7.1. Trade Unions**

A trade union may be set-up by minimum of 15 persons belonging to the same branch or profession, even if they carry out their activity for different employers.

Employed individuals and public officers have the right to set up trade union and to adhere

thereto. Individuals performing independent professions, cooperation unit members and farmers have the right to adhere to a trade union.

In order to defend the interests of its members, a trade union may use specific union means, such as: negotiations, litigation solving procedures through mediation or conciliation, petitions, protests, meetings, demonstrations and strikes.

The trade unions are entitled to represent their members in the collective bargaining contract negotiations and during labor conflicts.

## 7.2. Employers' Associations

Employers are the registered legal entities or the authorized individuals who manage and use capital, irrespective of its nature, in order to obtain profit under competitive terms, and who employs paid labor force.

At least 15 registered legal entities or authorized individuals (or at least 5 members from the sectors where they hold over 70% of the production volume) may establish an employers' association in order to protect their interests. The Government consults the employers' association when drafting programs for development, privatization, restructuring, economic cooperation, and the employers' association participates in the coordination structures of the programs with European Union.

Similar to the employees' trade unions, the employers' association may associate at national level.

The employers' associations are autonomous organizations with no political character that represent, support and defend the interests of their members in relation with trade unions, public authorities and third parties, including at the negotiation of collective bargaining agreements.

## 7.3. The Economic and Social Council

On the grounds of Law no. 109/1997, completed by Law no. 492/2001 and by Law no. 58/2003, the Economic and Social Council was established, as a three-folded, self-governing public institution of national interest, meant to ensure social dialogue at national level between the Government, trade unions and the employers' associations.

The Economic and Social Council has a consulting role in establishing the economic and social policies and strategies, as well as in reconciliation of any conflicts at branch or national levels between the social partners.

This Council's main powers are to advise on Government decisions and ordinance drafts, to inform the Government on any circumstances calling new enactments, etc.

## 7.4. Labor conflicts

### 7.4.1. Concept

Labor conflicts are conflicts between employees and their employers, regarding professional, social or economic interests, or the rights resulting from labor relations. Such conflicts can be:

- a) *conflicts of interests* (also called labor conflicts) are labor conflicts having as object the establishment of work conditions during the negotiation of the collective bargaining contracts regarding the professional, social or economic interests of employees;
- b) *conflicts of rights* are labor conflicts having as object certain rights or obligations

arising from any laws or other enactments, or from the collective or individual labor contracts, with reference to the employees' rights.

### 7.4.2. Situations when conflicts of interests may occur

Conflicts of interest may occur when:

- (i) the company refuses to proceed with the negotiation of the collective bargaining contract, when there is no collective bargaining contract signed or when the former collective bargaining contract has expired;
- (ii) the company refuses to accept the employees' claims;
- (iii) the company unreasonably refuses to sign the collective bargaining contract, despite negotiations being completed;
- (iv) the company fails to fulfill its obligation of initiating the mandatory annual negotiations on salaries, work duration, working schedule and conditions, as required by law;
- (v) in case of divergence at the annual negotiation on salaries, work duration, working schedule and conditions.

During the validity period of a collective bargaining contract, employees may not start conflicts of interests excepting the cases outlined at points (iv) and (v) above.

### 7.4.3. Settlement of conflicts of interests

Settlement of a labor conflict requires several steps, some of them mandatory (notification and conciliation), while other optional, applicable based on the parties' agreement (mediation and arbitration).

In all such cases where grounds for the initiation of conflict of interests may be spotted, the union's representative or the employees' representatives will notify, in writing, the company about the existing situation, indicating the employees' claims together with their arguments, as well as the proposals for the conflict settlement.

The company's management is bound to answer in writing to the trade unions or the employees' representatives, within 2 working days from the notification receipt. If the company fails to answer all the notified claims or, although the company answers such claims, the trade unions do not agree with their positions, the conflict of interests will be considered initiated and the representative union (in case of conflicts of interests, set up at the company level) or the employees' representatives will be bound to notify, in writing, the local bodies of the Ministry of Labor, Family and Equal Opportunities, in view of preparing for conciliation. The Ministry of Labor, Family and Equal Opportunities will appoint its delegate who will participate in the conflict of interest conciliation and who will summon the parties to the conciliation procedure, within a period that cannot exceed 7 days from the notification registration date.

If, further to such conciliation, the parties reach an agreement a final form of the collective bargaining agreement will be agreed, and the conflict of interests will be considered as solved.

If the conflict of interests cannot be settled as a result of the conciliation organized by the Ministry of Labor, Family and Equal Opportunities, the parties may mutually decide to initiate the mediation procedure.

The parties involved in the conflict of interests mutually appoint mediators.

For the entire duration of a conflict of interests, the parties involved in the conflict may mutually decide for the claims to be subjected arbitration by a commission comprised of one arbitrator

appointed by the employer, one arbitrator appointed by the trade union/employees' representative and one appointed by the Ministry of Labor, Family and Equal Opportunities.

The decisions passed by the arbitration commission will be irrevocable and binding on the parties and will become addenda to the collective bargaining contracts.

#### **7.4.4. Strikes**

The strike is a collective and voluntary work cessation within a company and can be declared during the conflicts of interests. Strikes may be declared only in order to protect the professional, economic and social interests of employees and may not target political goals.

In such cases when, after declaring the strike, half of the number of employees having decided to declare strike waive to such decision, the strike will cease. If possible, the employees not taking part in the strike may continue their activity.

For the entire strike duration, the employees will enjoy all rights arising from the individual labor contract, save for salary rights.

During the strike, its organizers will continue negotiations with the company's management in order to solve the claims making the subject of the conflict of interests. If the strike organizers and the company's management reach an agreement, the conflict of interests is considered settled and the strike ceases.

If the company considers the strike illegal, it may address the court an application requesting the termination of such strike.

If the court decides that the strike should cease, and upon the interested persons' request, the persons responsible for starting the illegal strike may be bound to pay damages.

## **8. Settlement of labor conflicts and litigation**

### **8.1. Panel of judges**

Law no. 304/2004 on courts organization, provides that, based on the Minister of Justice's decision, specialized sections or panels of judges be established within the court, meant to settle labor conflicts and litigation.

Such cases will be heard based on an urgent procedure, by a panel of two judges, assisted by two consulting magistrates, one of them representing the employers' associations and the other the trade unions.

Initially, the representatives of the employers' association and those of the trade unions within the panels of judges were entitled to deliberative votes, a regulation further on declared as unconstitutional by the Constitutional Court. Starting with February 2002, the name of such representatives was changed into „consulting magistrates” and their votes are merely advisory. A separate opinion of one or both magistrates will be, however, recorded in the judgment.

### **8.2. Procedural rules derogating from the common law**

Any labor conflicts will be settled based on procedural norms derogating from common law procedures, meaning that they:

- (i) will be subject to trial as emergency cases;
- (ii) hearing terms cannot exceed 15 days;
- (iii) the legal summoning term can be of 24 hours before the hearing term;

- (iv) the burden of proof will be incumbent on the employer;
- (v) the territorial competence belongs to the court having jurisdiction in the area of the claimant's residence / domicile / headquarters;
- (vi) the first instance's judgment is subject to second appeal only.

## 9. Social security

Romanian social security regime is grounded on the incorporation of common social security funds which, as a matter of principle, are state budget funds, save for certain funds established and organized based on certain special laws for certain professional categories, such as lawyers or farmers.

The contribution rates to the state social security funds are determined on a yearly basis by the law on social security budget approval and the law on health security or, for the contributions to the labor accident & professional illnesses insurance fund, by Government decision.

### 9.1. Contributions to the public pension system and other social security funds

The social security contribution rates are differentiated depending on the work conditions, i.e.: normal, hard or special, and are approved annually by the state social security budget law.

According to Law no. 387/2007 on the state social security budget for 2008, the social security contribution rates for the period January – November are as follows:

- 29% for normal work conditions;
- 34% for hard work conditions;
- 39% for special work conditions.

The social security contribution rates for the period December 2008 are as follows:

- 27.5% for normal work conditions;
- 32.5 for hard work conditions;
- 37.5% for special work conditions.

These rates apply to the gross monthly incomes. The contribution rate is partially owed by employees and partially by employers. As for the other categories of insured persons, who are not employees or who don't work for a certain employer or for an assimilated person, the contribution is entirely owed by the insured and will be in proportion with the gross insured income.

The employed insured individuals or those working for an employer or a person assimilated to an employer, will owe social security contributions amounting to 9.5% of their individual gross incomes. The employer will calculate, withdraw and pay such contributions to the social security fund on a monthly basis.

Individuals or legal entities acting as employers will owe the difference between the social security contribution rate - established by the social security budget law - and the share owed by the employee (for example: 19.5% for the normal work conditions category).

Un-employed individuals will owe the entire contribution rate.

## 9.2. Contribution to the unemployment security budget

The contribution to the unemployment security, professional integration support and social allowance fund, owed by employers is of 1% for the period January – November 2008 and 0.5% for the period December 2008 and applies to the monthly gross salary fund.

Any employed individual owes a contribution amounting to 0.5% of his/her monthly gross salary. The employer shall calculate, withdraw and pay to the unemployment security budget such contributions.

Any insured person carrying out a certain activity individually (such as associates, shareholders, free lancers, members of family associations, etc.) can be subject to insurance by means of concluding an unemployment security contract with the Agency for Employment and Professional Training. In such cases, the contribution will amount to 1.5 % of his/her declared monthly income for the period January – November, 2008 and to 1% for the period December, 2008, entirely owed by the insured.

## 9.3. Contribution to the health social security fund

The health social security funds are established based on the insured persons' contributions, on the contributions of the individual and legal entities having employed salaried personnel, on state budget subsidies as well as other sources.

As a general rule, employers are bound to pay the 5.5% health social security contribution, proportionate to the salary fund.

The monthly cash contribution of an insured person is established to 6.5 %, applied upon the gross salary incomes – for the employees – or upon the taxable incomes – for other categories of insured persons.

## 9.4. Contribution to the National Insurance Fund for Work Accidents and Professional Diseases

Starting with January 2003, the regulations regarding the set up of an insurance fund for work accidents and professional illnesses came into force, as part of the social security system and are meant to provide social protection against the risks involved by loss or diminishing one's working capacity, death as a result of a work accident or professional diseases. This fund is established by means of the contributions owed by employers or, as the case may be, persons insured through contracts.

The contribution for work accidents and professional diseases insurance owed by employers ranges between 0.4% and 2% applied to the gross salary fund, depending on the risk class associated with the employer's main object of activity. If, due to employer's fault, no contributions to this insurance fund are paid, the costs of insurance benefits and services will be borne by the employer.

The contribution for work accidents and professional diseases insurance owed and borne by non-employed individuals concluding, according to the law, insurance contracts for work accidents and professional diseases and who are insured with the public pension system, such as associates, shareholders, administrators, individuals carrying out independent activities, etc., was established as a fix rate of 1% of the insured monthly income.

## 9.5. Contribution to the Salaries Guarantee Fund

The Salaries Guarantee Fund was established in order to guarantee the payment of the salary receivables resulting from the individual labor contracts and from the collective labor contracts

concluded by the employees with employers against whom final court judgments were ruled for the opening of the insolvency procedure and with respect to whom the measure of the removal in full or in part of the administration right was ruled.

The employers are bound to pay the 0.25% contribution to the Salaries Guarantee Fund, proportionate to the salary fund.

## **9.6. Contribution to the National Fund for Social Health Insurances**

Under Government Emergency Ordinance no. 158/2005 on leaves and indemnities for health social insurances, the employers are bound to pay a contribution to the National Fund for Social Health Insurances amounting to 0.85% of the monthly salary fund, in order to allow the employees the access to indemnities related to medical leaves (e.g. indemnity for work incapacity, for maternity, etc).

## **9.7. Sanctions imposed on employers for failing to pay the amounts withheld as contributions to the social security funds**

Any employer's failure to pay the amounts withheld from employees as contributions to the public social security system, to the unemployment security budget or to the health security budget is qualified by the law as an offence and is punished with imprisonment or fines.