

JANUARY 2006

NUMBER I

IN THIS ISSUE:

FINANCE

- o Government Ordinance no. 28/2006 on regulating several financial-fiscal measures
- o Legal entities provided for by the new enactment
- o Special obligations settled for the non-banking financial institutions
- o NBR' s role in the activity of non-banking financial institutions
- o Provisions applicable to mutual aid funds and pawn shops..... **page two**

COMMERCIAL

- o Law no. 346/2004 on stimulating and developing SME
- o Definition of SME
- o New classifications of SME as proposed by GO no. 27/2006
- o Changes in the calculation of the average number of employees ..... **page four**

LABOUR

- o Amendments to the Law no. 130/1999 on certain protection measures for employed persons
- o Submittal of the documents attesting the payment of the salaries
- o Inspection challenge
- o Legal liability ..... **page five**

## FINANCE

**Government Ordinance no. 28/2006 on regulating several financial-fiscal measures**

Eagerly awaited by the actors on the financial market, the regulation for the crediting activity carried out by non-banking institutions has been materialised by passing the Government Ordinance no. 28/2006 on regulating several financial-fiscal measures, as published in the Official Gazette no. 89 of January 31<sup>st</sup>, 2006.

Aiming at regulating the non-banking financial market and creating an unitary regime applicable to the crediting activities, Title I of GO no. 28/2006 completes the legal framework settled by the Law no. 58/1998 on the banking activity, providing clear principles applicable to crediting by non-banking institutions.

Among these principles, there should be noted limiting the category of legal entities that may carry out crediting activities, restrictively setting the type of activities allowed to non-banking financial institutions, imposing obligations related to such institutions corporative organisation, as well as several special requirements in their relation with the National Bank of Romania.

**Legal entities provided for by the new enactment**

The main entities concerned by the new enactment, referred to as *non-banking*

*financial institutions*, are authorised Romanian legal persons carrying out crediting activities as financing commercial transactions, factoring or discount operations or securities, as well as leasing companies, mutual aid funds and pawn shops, the provisions of the ordinance being equally applicable to the Romanian branches of the foreign financial institutions.

According to GO no. 28/2006, the name of a non-banking entity which may carry out crediting activity has to include the phrase *non-banking financial institution* or its abbreviation („*IFN*”).

**Special obligations settled for the non-banking financial institutions**

GO no. 28/2006 provides that the non-banking financial institutions, except for the mutual aid funds and the pawn shops, have to set up or, as the case may be, reorganise as joint stock companies, having as sole object of activity carrying out authorised crediting activities.

Also mention should be made that a minimum mandatory ceiling is settled for these institutions at the level of Euro 200,000 in RON equivalent, as well as that it is expressly forbidden to take deposits or other reimbursable funds from public and to issue bonds and to grant credits secured by its own shares or conditioned by the client's acceptance of services not related to the respective crediting activity.

The new enactment provides that the non-banking financial institutions shall issue internal prudential norms, aiming at, among

others, their own funds, exposure toward a debtor and the total exposure, exposure toward the persons related to the non-banking financial institutions, assets status, setting up and using the risk provisions, or internal organisation and control.

The directors of non-banking financial institutions may be only natural persons. Beside, the persons in managing positions in such institutions shall have to cumulatively meet certain conditions of honourable behaviour.

#### **NBR' s role in the activity of non-banking financial institutions**

According to GO no. 28/2006, non-banking financial institutions shall have the obligation to provide detailed information to the National Bank of Romania („NBR”) regarding the capacity of significant shareholders, the structure of the groups to which they belong, as well as the group financial status, and NBR may request any information related to any entity in the group.

The new enactment provides the NBR's exclusive competence for all issues related to the prudential regulation, monitoring and supervision of the non-banking financial institutions, NBR being the only institution authorised to decide whether the activity carried out by a legal entity is a crediting activity and falls under GO no. 28/2006.

From a procedural point of view, it should be mentioned that the establishment of non-banking financial institutions shall be notified to NBR within 30 days from the registration with the Trade Register, these institutions being allowed to carry out the activities provided in the object of activity

only after their registration in the General Register of the non-banking financial institutions to be set up by the NBR.

#### **Provisions applicable to mutual aid funds and pawn shops**

According to GO no. 28/2006, mutual aid funds and pawn shops may carry out crediting activities under the following conditions: (i) registration in the General Register to be set by NBR; (ii) maintaining the organisation, operation and association as per the special legal provisions regulating mutual aid funds activity, respectively the organisation and operation according to the Companies Law no. 31/1990 as republished; (iii) limitation of the crediting activity according to the special legal provisions regulating their activity; (iv) limitation of the financing resources according to the special legal requirements regulating their activity.

The procedure and the requirements for the registration of the pawn shops in the General Register, as well as the modality to report data and information shall be settled by the NBR's regulations, according to the specific characteristics of the activity carried out.

From the transitory provisions of the GO no. 28/2006, we note that the entities concerned, except mutual aid funds and pawn shops, shall have to proceed to changing the company's legal form into a joint stock company and to fulfilling general requirements, with a view to obtaining the permission to carry out crediting activities.

As for the date until when the non-banking financial institutions established prior to

passing the enactment it shall comply with the new legal provisions, but it should be emphasized that GO no. 28/2006 settles a compliance term of 6 months from its entering into force (namely from February 3, 2006).

The implementation of the new legal provisions shall be settled upon the NBR' s passing methodological norms, during the months following its entering into force.

## COMMERCIAL LAW

### Law no. 346/2004 on stimulating and developing SME

Law no. 346/2004 on stimulating and developing small and medium-size enterprises („SME”) has been amended and completed by GO no. 27/2006 due to the necessity of harmonising SME legislation with the European directives.

#### Definition of SME

For being included in the SME category, companies have to obtain an annual net turnover up to Euro 50 million, in RON equivalent, (before the new provisions the turnover had to be of Euro 8 million), or to hold an aggregate number of assets (capital assets plus circulating assets and advance costs) not exceeding Euro 43 million in RON equivalent.

#### New classifications of SME as proposed by GO no. 27/2006

GO no. 27/2006 adds to the existing classification criterion for SME (regarding the annual average number of employees) an additional criterion, namely the annual

net turnover or the aggregate number of assets.

Depending on this added criterion, small and medium size enterprises are classified into: (i) micro-enterprises, with up to 9 employees and with an annual net turnover or which hold total assets of up to Euro 2 million in RON equivalent; (ii) small enterprises, with a number of employees between 10 and 49 and an annual net turnover or which hold total assets of up to Euro 10 million in RON equivalent; (iii) medium-size enterprises, with a number of employees between 50 and 249 and an annual net turnover of up to Euro 50 million in RON equivalent or which hold assets whose total value does not exceed Euro 43 million.

We mention that, although the independence condition is not anymore a distinct criterion for defining SME, it has been transposed in the new classification of SME as autonomous, associated and affiliated, as proposed by GO no. 27/2006, by the criterion of the relation with other enterprises against the capital/ voting rights held or the right to exercise a determinant influence.

GO no. 27/2006 defines these types of enterprises also providing the entities which do not meet the conditions required for being included in these categories.

Thus, an enterprise is considered as *autonomous* if it holds less than 25% of the share capital or voting rights in one or more enterprises or if one or more enterprises do not hold more than 25% of the share capital or voting rights in that enterprise.

## LABOUR LAW

The enterprises which are related meaning that one enterprise holds, individually or jointly with one or several affiliated enterprises, 25% of another company's share capital or voting rights, are considered *partners*.

GO no. 27/2006 defines enterprises as *affiliated* by considering certain criteria, among which, holding the majority of the voting rights, the right to appoint and revoke most of the board of directors members, the possibility to exercise a determinant influence over the other enterprise.

#### **Changes in the calculation of the average number of employees**

GO no. 27/2006 introduces new criteria for calculating the average number of employees in the enterprises. In the calculation of the average number of employees are considered the employees hired for an indefinite period, and respectively excluded certain categories of employees, such as apprentices, pupils or students undergoing vocational training.

Other changes refer to the data depending on which the annual average number of employees, the annual net turnover and the total assets are calculated.

In respect of regulating the SME's preferential access to public acquisitions of products, works and services, GO no. 27/2006 cancels the free technical assistance for facilitating the SME's access to specialised training services in this field.

#### **Amendments to the Law no. 130/1999 on certain protection measures for employed persons**

Law no. 130/1999 on certain protection measures for employed persons has been amended by passing the Law no. 403/2005.

Among the amendments, we mention those regarding the regular submittal by employers of the documents attesting the payment of the salaries, inspections challenge, employers' legal liability.

#### **Submittal of the documents attesting the payment of the salaries**

The prior Law no. 130/1999 provided that the employers should submit quarterly the documents attesting the payment of the salary and those attesting the social security payment, but the Law no. 403/2005 provides the monthly fulfilment of this obligation, until the 25<sup>th</sup> day of the month following the one for which payment is made.

These documents attesting payment shall be submitted to the territorial labour inspectorate under whose jurisdiction employers carry out their activity. This obligation is applicable also to the working units, if these are located in another county than the one where the company has its headquarters.

The amendments to the Law no. 130/1999 have also excluded specialised companies, legally authorised, from the range of persons who may keep and fill in employees' labour books, upon request.

We also mention that, based on these amendments, the individual labour agreements concluded by Romanian citizens with diplomatic missions, with foreign consulate offices in Romania, with companies' representative offices in Romania, associations, foundations or organizations headquartered abroad shall be registered with the Territorial Labour Inspectorate Bucharest, respectively with the territorial labour inspectorates under whose jurisdiction these are headquartered. Moreover, the above mentioned Romanian citizens' labour books are kept and filled in by the same labour authorities.

#### **Inspection challenge**

The Law no. 403/2005 provides that persons concerned may file a contestation against the inspection concerning the calculation of the 0.25% and 0.75% fee owed to inspectorates and the related penalties, contestation which shall be settled by the competent bodies.

#### **Legal liability**

With regard to employers' legal liability, the Law no. 403/1999 introduces other two offences. One of them is the repeated denial of the labour inspectors' access to any of the unit premises or refusal to provide them with the documents requested.

The other offence regards the repeated use of persons who carry out paid activities, without being observed the legal provisions concerning the conclusion of the individual labour agreement in writing.

We also mention that the Law no. 403/2005 extends the range of persons held liable for the offences provided by law, regulating the penal liability of the persons in the company's management (manager, executive manager, director, employer's legal representative - legal/natural person, respectively other persons delegated by employer).

---

The report hereto has a strictly informative, selective character; it does not represent legal advice, not treats a specific matter in all its aspects. This report is protected under the regulations pertaining to the copyright and it cannot be reproduced without the prior consent of Popovici & Asociatii. For supplementary information or analysis on specific matters, do not hesitate to contact our lawyers, according to their specialization, by accessing [www.popovici-partners.ro](http://www.popovici-partners.ro).

---