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FACULTATIVE PENSIONS

Considering the necessity to improve the Romanian legal framework regulating the pension system, as suggested within the negotiations pertaining to the integration process with the European Union, the Law regarding the Occupational Pensions no. 249/ 2004 (“**Law 249/2004**”) was repealed as of June 3, 2006 by the entering into force of the Law concerning the Facultative Pensions no. 204/2006 (“**Law 204/2006**”).

Law 204/2006 includes new elements referring mainly to: (i) the legal entities entitled to manage facultative pension funds and the requirements to be met by such entities with respect to their share capital, (ii) the authorization, functioning and the administration mechanism of the facultative pension funds, (iii) the persons who may acquire a facultative pension product, (iv) the pension payment conditions and (v) the incorporation of the Guarantee Fund of the pensions regulated and supervised by the Commissions (the “**Guarantee Fund**”).

The managers of the facultative pension funds

The new regulation enhances the category of legal entities entitled to manage facultative pension funds by including, apart from the pension companies, the investments management companies and the insurance companies.

The managers’ authorization. The above stated entities may manage facultative pension

funds only if (i) they are duly incorporated and organized under the relevant applicable legislation in accordance with their scope of business and (ii) have been granted the authorization to manage facultative pension funds by the Supervision Commission for the Private Pension System (the “**Commission**”).

Such authorization shall be issued by the Commission within a 30 day term as from the submission of the full and complete documentation provided that the applicant fulfils the legal requirements. The applicant is communicated the approval or, the case may be, the rejection decision within 5 days as from the adoption thereof.

The Managers’ authorization may be suspended - for non-observance of the prospect of the facultative pension scheme or the provisions of Law 204/2006 and/or the norms to be adopted by the Commission in connection hereof - or may be withdrawn should any of the cases expressly provided by the Law 204/2006 be met. Should this be the case, the Commission shall institute the special management with respect to the fund managed by the Manager in breach.

The share capital. The Law 204/ 2006 establishes at the RON equivalent of EUR 1.5 million the minimum share capital of the entities managing facultative pension funds, unlike the Law 249/2004 which set forth a higher level of the share capital (the RON equivalent of EUR 2 million). The manager has to increase its minimum share capital by 0.2% for each EUR million exceeding the RON equivalent of EUR 200 millions total

net assets of the facultative pension funds under its management.

The Facultative pension funds

Authorization and functioning. The facultative pension fund may be incorporated based on a civil company agreement whose content shall be established by norms to be issued by the Commission. The fund may receive contributions only after having been duly authorized by the Commission. Such authorization is granted within a 30 day term after the submission to the Commission of the full and complete documentation provided the legal requirements are met.

The facultative pension fund shall have at least 100 participants. The decrease of the participants' number and the maintenance thereof below the minimum required level, for a three month period, results in the withdrawal of the fund's authorization and the installation of the special management.

The investment of the fund's assets. The Law 204/ 2006 redefines the investment classes and levels with the view to eliminate the obstacles to the free circulation of capital. It stipulates as well the tax exemption of the investments until the payment of the participants' and beneficiaries' rights.

The participants in and their contributions to the facultative pension funds

Participants. The persons entitled to adhere to a facultative pension fund are (i) the employees, (ii) the public officers or (iii) the authorized persons/ freelancers, (iv) the

persons performing their activity in elective functions or the persons appointed within the executive, legislative or judicial authorities, during the term of their mandate, (v) the members of the cooperative companies as well as (vi) any other persons making earnings from professional or agricultural activities.

The participation in a facultative pension fund is no longer dependent upon the employer's, syndicates' or the employees' representatives' decisions, becoming just a question of personal option.

Contributions. The contributions to the pension fund, established in accordance with the rules of the facultative pension scheme, are withheld and transferred by the employer or by the employee, as the case may be, together with the mandatory social security contributions. The contributions to a facultative pension fund can not exceed 15% of the participant's gross monthly revenue, being deductible from such revenue up to EUR 200 in a fiscal year. The contribution burden may be shared between the employees and the employer in accordance with the collective labour agreement or a protocol entered into by the employer and the employees' representatives.

The pension payment

The new regulation modified the cumulative conditions to be met by the participants in a facultative pension fund with respect to their pension rights by (i) providing the principle of equal treatment between men and women with respect to the participant's

age (60 years for both women and men) and by (ii) increasing the number of the minimum monthly paid contributions from 60 to 90.

The Guarantee Fund

The Guarantee Fund shall be established by the contributions of the managers and the providers of the facultative pensions, as the case may be, with the purpose to enable the payment of the participants' and the beneficiaries' pension rights, in case of impossibility of the managers or the facultative pensions providers to pay the said rights. The Guarantee Fund shall be incorporated within 90 days as from the granting of the authorization to manage the facultative pension funds to at least three managers.

CONCESSIONS

Concession Contracts Regime on the public assets

In order to complete the legal framework on the concession contracts, the Government passed the Government Emergency Ordinance no. 54/2006 regarding the regime of the concession contracts on public assets ("GEO no. 54/2006"), in the same time with the coming into force of the regulations relating to public works and services concession, provided in Government Emergency Ordinance no. 34/2006 ("GEO no. 34/2006").

GEO no. 54/2006 takes over, in a significant proportion, the provisions of the former

legal framework on the concessions regime – Law no. 219/1998. In the main, the provisions relating to the competent authorities responsible to decide the concession, the parties of the concession contract, the duration of the concession contract, its content, the amendment and the termination of the contract, the renewal of its duration and the principles of the contract awarding, remained unchanged.

The element of novelty is referring mainly to the (i) possibility of the under-concession of the public assets, granted directly by concession to the national companies or the companies under the subordination or coordination of the Government, local councils or county councils, (ii) removal of the procedures of pre-selection bidding and competitive dialogue among the awarding procedures of the assets concession contracts, (iii) subject matter of the concession contract, which under the provisions of the new enactment may refer only to the assets that under the law provisions are public property of the State or local authorities and not to the assets that are private property of the State.

At the same time, the awarding procedures of the concession contracts in accordance with the provisions of GEO no. 54/2006 are much more operatives: (i) the decision approving the concession shall be issued based on of the opportunity study and not after the issuance of the terms of reference, (ii) the time limits provided for fulfilling the procedurals acts were reduced.

The concession file is a public document. The new enactment provides the possibility

for any person to have access, according to the provisions of the law on the free access to the information of public interest, to the information contained in the file.

Within 30 days as from the publication of the above enactment in the Romanian

Official Gazette, the Ministry of Public Finance and Ministry of Justice shall issue and propose to the Government the implementation norms on the concession of the assets that are public property.