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LABOUR  
SOCIAL SECURITY

The recent amendment of the Labour Code requires the harmonization of the entire relevant legal framework. The adjustment or abrogation process for enactments that have been adopted based on the structure of the former code and reflect the former labour relationships system has already started and is in due course. New enactments are also expected for detailing the implementation of certain specific institutions or aspects created by this new Code.

As from March 1<sup>st</sup>, 2003 the new Labour Code is governing the general framework of labour relationships in Romania. After the publishing of the Labour Code a series of debates have occurred, the most important aiming to the incompatibility between certain provisions and the existing legal framework. This category includes the suppression of the civil services conventions and their replacement with part-time labour agreements, as well as the creation of some institutions without supplementary implementation norms (e.g. the temporary labour agent etc.).

Further to these debates, in March 2003 a series of enactments were adopted in order to correlate the new system with the already existing legislation.

By two Orders, no. 64 and no. 76, published in the Official Gazette no. 139 of March 4<sup>th</sup>, 2003 and, respectively the Official Gazette no. 159 of March 11<sup>th</sup>, 2003, the Minister of Labour and Social Solidarity has approved the standard framework for the individual labour agreement.

**New compulsory clauses under the individual labour agreement are changing.**

The compulsory elements to be contained by an individual labour agreement refer to the: parties, object and duration of the agreement, place of work, type of work (position/specialty), job description (as they result from the job specifications), working conditions, work duration, period of leave, rights and obligations regarding labour safety and health, general rights and obligations of the parties, settlement of disputes between parties. Certainly, by negotiation, the parties can also add other clauses required by their labour relationship.

The employer's obligation to register the signed individual labour agreement in compliance with the conditions set by the law with the territorial labour inspectorate still exists. In addition, the agreements must also be recorded in the general employees register held at the employer's headquarters.

**The Employees register will gradually replace the Labour Books.**

Regarding this register, we mention that the norms for its drafting and filling were adopted by the **Government Decision no. 247** of March 4<sup>th</sup>, 2003, published in the Official Gazette no. 164.

As specified by the new Labour Code, keeping, registration, drafting and filling of the general employees register falls within the obligations of each employer.

Pursuant to the Government Decision no. 247, within 10 working days as from the date of the activity's initiation, every employer is liable to enlist the register with the Labour Inspectorate within the territorial range of its headquarters. The employers, who at the date of coming into force of the present decision are already carrying out their activity, are liable to draft the register within 60 calendar days.

The register will have a standard form and shall bear on each page the seal of the labour inspectorate, becoming an official document as from the date of its registration.

**The register must comprise all the essential elements of the labour relation.**

The compulsory elements are: identification data of all employees, date of the agreement concluding, date of the activity's initiation, amendment and suspending of the agreement, its duration, labour's duration expressed in hours/day, position (office and/or specialization), basic salary provided at the date of the agreement's conclusion, date and legal grounds for the agreement's ceasing.

**The Territorial Labour Inspectorate is competent to verify the accurate recordings made with the registers.**

Any concluding, amendment, suspending, ceasing of the individual labour agreement shall be reflected in the columns corresponding to the respective employee in the employees register. The register is kept at the employer's headquarters, however the Inspectorate is entitled to withhold the register for a period of maximum 10 working days in order to check it's accurate filling, in compliance with the documents

existing in the employee's personal file. This former shall contain at least the documents required for employment, the individual labour agreement, the addendums and the other documents referring to the execution, amending, suspending and ceasing of the individual labour agreements, as well as any other documents that certify the legality and accuracy of the recordings in the register.

**Commissions are no longer paid towards the Territorial Labour Inspectorates**

Mention should be made that once the obligation to keep the general employees register is set, the employers are no longer held to pay the Territorial Labour Inspectorates the 0.25% commission, respectively 0.75%, applied to the monthly salaries fund, owed on the basis of art. 12 of the Law no. 130/1999 on certain measures of protection for employee.

**Amendments to the public pensions system regime**

Pursuant to the **Government Emergency Ordinance no. 9** published in the Official Gazette no. 167 of March 17<sup>th</sup>, 2003, for the amendment and completion of Law no. 19/2000 on public pensions system and other social security rights, the sphere of beneficiaries of the public pensions system is restrained.

The removal of civil services conventions for services has caused the amendment or abrogation of provisions of the Law no. 19 that set the legal regime from the angle of social security rights of the services providers according to such conventions.

Pursuant to the Ordinance the persons that do not pay social security contributions to

the public system, as well as those who are not insured within other social security systems, not included in the public system, can be insured in the public system based on a social security agreement.

The amendments brought to the Law 19 also concern the method for settling the subscription period and the conditions and moment as from which the rights of seniority pension, anticipated pension or invalidity pension are granted and paid.

**The maximum threshold for the child care allowance was set to approximately 4,200,000 ROL/month.**

An element of wide public debate is the limitation of the maximum threshold for the child care allowance, regardless of the stage of subscription or the paid contributions, element brought by the Ordinance no. 9. The legal text, that has caused wild media reactions, provides that the net amount representing the allowance for child care **cannot exceed** 85% of the net average salary annually foreseen by the law on the state social security budget (namely 4,956,000 ROL).

The calculation basis for the social security allowance provided for maternity leave and the child care allowance is set as an average of the monthly incomes within the 10 months prior to the child's birth and the monthly amount of the allowance is 85% of the set calculation basis, as established.

With respect to the social security contribution for the unemployed, the law provides that this contribution is fully paid from the budget of the unemployment security at the level of the quota set for normal work conditions and the social

security contribution for persons benefiting of compensation payments are paid from the budget of unemployment security at the level of the individual quota of social security contribution.

We emphasize that, once the new Ordinance shall come into force, the insurance statements and social security agreements concluded by the persons who have completed their secured income up to the legal threshold shall cease.

## PRIVATIZATION

**T**he Government Emergency Ordinance no. 8 on the stimulating of the restructuring, reorganization and privatization process for some national companies, national corporations and majority State owned companies, published in the Official Gazette no. 144 of March 5<sup>th</sup>, 2003 amends certain provisions of the recently passed Law no. 137/2002 on certain measures for the acceleration of privatization and provides the rights that the persons dismissed as a result of the restructuring or reorganization of the concerned companies during March 1<sup>st</sup> - June 30<sup>th</sup>, 2003, would benefit from.

Concerning the amendment of Law no. 137/2002, the rule under which the receivables of the utilities suppliers are converted into shares of the debtor companies is set. The shares shall be transferred to the Authority for Privatization and Management of the State Ownership that will sell them together with the share package that it already holds, through the privatization process.

After collecting the shares price, the equivalent value shall be distributed to the receivables holders, pro rata.

Pursuant to the **Government Decision no. 421** of March 4<sup>th</sup>, 2003, the receivables that are converted into shares are set by a commission formed of one representative of each public institution involved in the privatization, the Ministry of Public Finances, the Ministry of Industry and Resources, the local public authority or other public institution under whose subordination the utilities supplier is, as well as a representative of the utilities supplier.

#### **New compensation payments for the persons dismissed**

The persons dismissed during March 1, 2003 - June 30, 2003, as a result of the restructuring/reorganizations and that are mentioned within the list of companies approved by the **Government Decision no. 421** will receive, upon their dismissal, an amount equal to the double of the Romanian economy net average salary in the month of January 2003 and, monthly, an unemployment benefit set pursuant to the norms in force. A completing revenue calculated in relation with the years of work is added to such amounts. The concerned amounts are fully paid from the unemployment security budget.

### CAPITAL MARKETS

**The Instruction no. 1** of the National Securities Commission published in the Official Journal no. 178 of March 21<sup>st</sup>, 2003 provides the authorization and re-authorization procedure for the securities

companies into financial services and investments companies.

The authorization application is recorded with the NSC accompanied by the documentation that proves the change of object of activity and denomination; subsequently, within 60 days as from the NSC decision regarding the authorization of the amendments, the functioning authorization as a financial services and investments company shall be requested.

**The deadline for the authorization/ re-authorization procedure for the securities companies is September 9<sup>th</sup>, 2003.**

Until this date, all the documentation required by the Instruction referring to the constitutive acts, directors and managers, shareholders, etc. should be filed with the NSC.

### INSURANCE

**B**ased on the **Law no. 76** for the amendment and completion of Law no. 32/2000 on the insurance companies, the powers of the Insurance Supervisory Commission are increased.

Thus, in addition, the Insurance Supervisory Commission shall have the following powers: i) approval of any amendments to the documents or conditions based on which the set up and functioning authorization for insurance companies and brokers was granted; ii) annual authorization for concluding compulsory insurance policies and the collecting as own revenues of the percentage contribution from the value of gross premiums collected in relation with the concerned insurances.

This former attribution is granted for exercising the supervision and control of the compulsory insurances activity and enforcing the sanctions provided by law for exercising a direct or indirect influence, that is incompatible with the prudential principles of leading the insurers activities, principles set by the norms.

**The Romanian Green Card office is established**

In addition, the new law provides that the insurers, issuers of international insurance documents "Green Card", shall form the Romanian Green Card Office, pursuant to the provisions of the Green Card International Convention, with the approval of the Insurance Supervisory Commission. The activity of the Romanian Green Card Office shall be subject to the regulation and supervision of the Insurance Supervisory Commission.

**Procedural aspects**

We mention as a new element that the condition for the foreign insurer to have performed for at least 5 years an activity similar to the activity it intends to perform in Romania was removed.

It was also expressly provided that the document establishing and individualizing an insurer's payment obligation is a receivable that becomes a writ of execution as of its maturity date.

**TAXATION**

**O**nly two months as from its coming into force, the Government Ordinance no. 61/2002 on the collecting of the budgetary

debts was amended by the Parliament in the approval procedure (Law no. 79/2003).

The amendments aim mainly to a more accurate correlation, from the formal point of view, of the provisions of GO no. 61/2003 with the legal framework in force, in view of easing the enforcement of the enactment.

In addition, amongst the substantial punctual changes, we draw the following to your attention.

**Specifications to the special liability of the companies' directors, associates for payment of the budgetary debts regime.**

The special liability of directors, associates and other persons called to cover the budgetary debts of a legal entity (set pursuant to the law's conditions by the art. 7 par. 2 and 3) can be engaged only for the budgetary obligations overdue and payable after the date of January 1, 2003.

The payment date in case of budgetary obligations with fixed or longer payment term, made by banking transfer or by post payment draft, is deemed the date when the general current account of the State's treasury, opened with the National Bank of Romania, is credited. Thus, the principle related to the payment date, set by the GO no. 61/2002, that has caused several malfunctioning and discontent in practice, is kept in force.

**The amendments brought to the budgetary debts related penalties can be made only annually.**

The quota can be modified only annually, by the State budget law, and not by the Government, upon the proposal of the

Ministry of Public Finances, as provided in the initial text of the GO no. 61/2003.

#### Other provisions

A change that would cause several controversies regards the text of art. 55. Pursuant to this article, the legal or physical entities that exercise freelance professions become liable to provide information, upon the request of the execution bodies, for accomplishing of the forced execution procedure, as well as for taking measures for eliminating the budgetary debts.

The enactment's new phrasing is setting the obligation of the execution body to request the commencement of the judicial reorganization and bankruptcy procedure, under the conditions of the law, in case to budgetary debts owed by companies, consume or handicraft cooperatives or individuals.

As regards the sanctioning regime, the law sets certain special crimes in addition to the existing misdemeanors. Thus, the act of the debtor or third parties to steal, replace, damage or alienate the seized assets in compliance with the legal provisions is incriminated. Also, a special crime is considered the withholding by the payers of the budgetary debts and failure to pay within at most 30 days as to their maturity date the amounts representing salary tax and incomes assimilated to salaries, tax on dividends and tax owed by the non residents for the incomes obtained in Romania.

A series of controversial provisions contained by the GO no. 61/2002, from amongst which those setting the preference

order of the amounts resulted from the forced execution are still unchanged.

#### Exemption from the payment of the tax for the outside locality borders lands.

The Government has passed the Emergency Ordinance no. 12/March 13, 2003 on the exemption from payment of the tax for lands located outside locality borders (published in the Official Gazette no. 167/March 17, 2003).

Thus, the Government Ordinance no. 36/October 30, 2002 on the local taxes and charges (republished in the Official Gazette no. 670 of September 10, 2002, with the subsequent amendments and completions), that set the obligation to pay tax for lands located outside locality borders was implicitly amended.

Unfortunately, the text of the recently adopted EGO no. 12/2003 is confusing. First of all, the corresponding texts of the Ordinance no. 36/2002 that imposed the general obligation to pay this tax for all the lands located outside locality borders were not expressly amended. In exchange, the exemption from the payment of the tax owed for the outside locality borders lands mentioned in the appendix no. 4 to the G.O. no. 36/2002 is set, where the categories of lands existing in the outside locality borders are briefly listed.

Secondly, although the Emergency Ordinance no. 12/2003 provides the set off or reimbursement of the amounts paid as tax or ancillary for the mentioned lands (interest, penalties of delay or other penalties), the enactment does not set the dates as from which the payment made will be deemed as not payable and the basis

upon which the set off or reimbursement shall be made.

## COMPANIES

**B**y the Law no. 82/2003 the Ordinance no. 38/2002 that has amended and completed the Law no. 64/1995 on the procedure of the judicial reorganization and bankruptcy was approved.

**This way, the procedure of the judicial reorganization and bankruptcy was amended.**

First of all, the conditions pertaining to the appointment of the administrator were supplemented. Thus, the administrator becomes liable, before his appointment, to remit to the syndic judge the proof that he has contracted an insurance policy for professional malpraxis that would cover the eventual prejudices caused during the fulfillment of his attributions.

Additional legal possibilities for the syndic judge to verify the administrators activity, starting from the enforcement of sanctions with fine and until the suppression of the illegal acts and measures promoted by the administrator in exercising his specific prerogatives and his holding responsible for the recovery of the caused damages were also provided.

By the above-mentioned approving law, special crimes incident in the matter of judicial reorganization and bankruptcy (from amongst which, the crime of fraudulent bankruptcy, as well as those of fraudulent administration and embezzlement having as active subject the

administrator or the liquidator of the debtor's assets, etc.) were also set.

Finally, the express possibility to suspend the procedures provided by the Law no. 64/1995 with respect to the majority State owned companies or local administration authorities, in the privatization process, that fall under the conditions of the law was set.

## INDUSTRIAL PROPERTY

**I**n the Official Gazette no. 193 of March 26<sup>th</sup>, 2003, the Law no. 129 of December 29, 1992 on the protection of industrial models and designs was republished.

The updated form of the law is the result of the amendments brought by the amending Law no. 585/2002. They refer mainly to the updating and detailing of the registration procedures for the industrial models and designs, the more accurate setting of rights and obligations reverting to the persons and institutions aimed by the legal procedures.

## MINING AND MINERAL RESOURCES

**T**he Romanian Parliament has passed a new Mining Law, Law no. 85/2003, published in the Official Gazette no. 197 of March 27<sup>th</sup>, 2003, that has abrogated the former Mining Law no. 61/1998.

In general, the new law maintains the majority of provisions existing in the former enactment pertaining to mines.



The amendments refer mainly to additional obligations in the charge of holders of prospecting permits, exploitation and exploration licenses and the attributions of the involved institutions, corresponding to the activity types provided by the law and the development phases of such activities.

Mention is made to the main interdiction to perform mining activities on lands where historical, cultural monuments are located, and other such lands having a special regime. Still, the possibility to avoid these interdictions based on the Government's reasonable opinion the opportunity of such investment was set.

The granting of the exploitation license is made, as a principle, either directly to the holder of the exploration license or to the winner of public offers contest, whose organization and development conditions are set by the competent authority by norms, under the conditions of the law, by derogation from the legislation on the concession regime.

In addition to the former enactment, the license holder must prove the creation of the financial guarantee for the environment recovery, as well as for the payment of the debts towards the State budget.

Concerning the foreign legal entities that obtain the right to perform mining activities in Romania, such persons will be liable to set up and maintain during the entire term of the concession a subsidiary in Romania, with no alternative, as it was provided by the former enactment, to set up and maintain only a branch.

We also note that the law imposes the increase of approximately 5 times of the annual prospecting taxes and it also sets mining royalties of different value, between 2 and 8% of the mining production value, depending on the type of exploited ore.

The new law provides that the old exploration/exploitation licenses granted before the entering into force of the present law or in course of being approved remain valid for their entire term in the conditions that they were entered into. Yet, their holders can request the amendment and completion of the licenses provisions pursuant to the new law.

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