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CIVIL PROCEDURE

As of August 28, 2003, new rules in the matter of civil procedure will become applicable in Romania, pursuant to the entrance into force of the Government Urgency Ordinance ("OUG") no. 58/2003 regarding the amendment and completion of the Code of Civil Procedure.

Change of the specific jurisdiction of the local courts and tribunals

Pursuant to the said amendments to the Code of Civil Procedure, the jurisdiction of the local courts and tribunals in the matter of civil and commercial claims has been re-defined. Thus, the local courts will have the capacity to solve claims under ROL 1 billion, in both civil and commercial matters, whereas the tribunals shall undertake the claims exceeding the ROL 1-billion ceiling.

The appeals shall be judged by the courts of appeal and the recourses by the Supreme Court of Justice

Moreover, the new rules restructure the courts' capacity to handle the challenge-possibilities in the civil trial. As regards the appeals, it has been set the rule that these shall be carried out only by the courts of appeal for all decisions issued by the inferior courts: the local courts and the tribunals. Consequently, the tribunal is no longer competent to solve the appeals challenging local courts' decisions, as these shall be undertaken directly by the courts of appeal.

Mandated - by the law regulating its organization - to survey the correct and uniform application of the laws by all lower courts, the Supreme Court of Justice can actually perform this task only in accordance with the provisions of the new OUG no. 58/2003. In this sense, the OUG no. 58/2003 provides that all recourses shall be solved by the Supreme Court of Justice, with the exceptions specifically mentioned by the law. The intent to assign the Supreme Court of Justice the full and exclusive competence to solve the recourses is endorsed by the abolition of the present capability of the tribunals and courts of appeal to judge recourses.

New phases in the judicial procedure applicable to the recourse

It is to be noted that an additional change regards the judicial procedure applicable to the recourses, where a new phase has been introduced, i.e. **the admission in principle of the recourse motion**. This shall be carried out based on the report drafted by a judge appointed by the president of the court, which will analyze the formal requirements, grounds of the motion and opinions issued in the legal theory and practice on similar issues. The report shall be examined (without calling the litigant parties) by a panel of 3 judges. In case that the judges reach an unanimous decision that the recourse motion under examination does not meet the formal criteria or the mandatory grounds for recourse, the recourse motion shall be annulled or dismissed by a grounded decision which can not be further challenged.

The abrogation of the recourse for annulment

The new amendments to the Code of Civil Procedure abrogate integrally the provisions regarding the extraordinary possibility of challenge - the recourse for annulment. In accordance with the former legal provisions, the General Attorney attached to the Supreme Court of Justice, ex officio or upon the request of the ministry of justice, has been granted the possibility to challenge irrevocable court decisions, for limited reasons and within a delay of 1 year. The recourse for annulment has been frequently criticized by the European Court of Human Rights from Strasbourg, given the negative impact over the legal order and the authority of irrevocable judgments. Additional criticism regarded the fact that the General Attorney, placed under the authority of the executive power, was potential subject of political injunctions.

Reintroduction of the appeal in the commercial claims

By the amendment of the art. 720⁸ of the Code of Civil Procedure, it has been removed the clause pursuant to which first-instance decisions issued in the commercial claims can be challenged only by recourse. Consequently, it has been reopened the possibility of the appeals in the commercial trials. Notwithstanding the introduction of the appeal, the decisions issued by the first-instance courts in commercial cases continue to be enforceable.

Revision of judgments grounded on the decisions of the European Court of Human Rights ("ECHR")

The Code of Civil Procedure has also been altered in order to allow the reformation of the internal courts' judgments as consequence of the decisions adopted by the ECHR. The appropriate motion for revision grounded on this reason, should be filed within 3 months of the publication of the ECHR decision in the Official Gazette of Romania.

The new procedural rules shall become immediately applicable, including as regards the pending cases and the enforcement proceedings commenced under the former legal frame. Notwithstanding the above, the decisions issued before the entrance into force of the OUG no. 58/2003 shall be challenged by the means and within the terms set by the law in force at the time of their issuance.

LOCAL PUBLIC FINANCE

By enacting the OUG nr. 45/2003 (the Official Gazette no. 431/19.06.2003), the Government has set a new legal frame in the matter of the public local finance. This aims at restructuring the rules organizing the collection, management and control of the public local finance, as well as at improving their usage, in consideration of the principle of the autonomy of the public local finance.

The territorial-administrative units are allowed to use their own incomes as collateral for the loans

Among the new elements promoted by the OUG no. 45/2003, it can be noted the refined classification of the incomes and expenses from local budgets, and of the proceedings regulating the usage of the funds.

Moreover, it is set the possibility for the local bodies, subordinated local economic entities and providers of public services to collateralize the loans by their own incomes, as defined by the OUG no. 45/2003. However, the engagement of loans and guarantees must be performed with the observance of the limit set by the law. In this respect, the OUG no. 45/2003 provides that the total value of loans (including due installments, interests and other additional fees such the commissions etc) plus the guarantees cannot exceed the ceiling of 20% of the total own incomes, save for the cases expressly allowed by law.

OUG no. 45/2003 provides the new quotas from the income tax and other financing sources from the state budget to be distributed to local budgets

According to the aforementioned ordinance, from the amount collected as income tax in each administrative-territorial unit, the following quotas will be monthly distributed: (i) 36% to the local budgets of villages and cities, where the tax payers are performing the activity, (ii) 10% to the county budget and (iii) 17% in a separate

account, opened on behalf of the county council in order to compensate the local budgets of the respective county and of the villages and cities.

In case of Municipality Bucharest, the quota of 63% of the income tax will be allocated as follows:

- 18% to local budgets of the inner districts;
- 36,5% to own budget of the municipality Bucharest;
- 8,5% in a separate account opened on behalf of the General City Hall of the Municipality Bucharest to compensate the local budgets of the districts and of the Municipality Bucharest.

The above quotas may be increased, under special cases, by the law on the state budget.

Besides the said quotas, the law on the state budget may approve additional amounts to be distributed from budgetary sources so as to finance public expenses incurred by certain activities, decentralization of services and activities, as well as to compensate the local budgets of the administrative-territorial units.

Criteria for the distribution of the amounts from state budget to the counties

The allocation of the amounts from the state budget to the counties shall be performed in consideration of the following criteria:

- the financial capacity of the county - calculated on the basis of the total income tax collected per each inhabitant, having a value of 70% of the amounts allotted;

- the surface of the county, having a value of 30% of the amounts allotted;

The new legal frame shall enter into force starting with 01.01.2004, save for the provisions regarding the possibility for the administrative-territorial units to collateralize the loans, which have already entered into force upon the date of publication in the Official Gazette (19.06.2003).

FINANCIAL - BANKING LEGISLATION

Modern payment systems

Declared as priority of the governmental policy, the extension of the use of the debit and credit cards attempts to reach its application by the recent enactment of the Law no. 250/2003 (Official Gazette no. 429/2003) regarding the approval, with amendments, of the OUG no. 193/2002 on the setting-up of the modern payment systems.

Legal persons with yearly turnover more than EURO 100.000 - obliged to accept debit and credit cards

Legal persons acting in the retail trade, having an annual turnover more than the ROL equivalent of EURO 100 000 have been obliged, since July 1st, 2003 to accept debit and credit cards as means of payment.

According to the aforementioned law, such obligation is no longer incumbent on economic entities providing public services and on the public institutions collecting taxes, duties, fines and other similar

payments. These will only have the possibility to accept payments by debit and credit cards. At the same time, the law provide for the experimental implementation in the year 2003 by the providers of public services and public institutions of the provisions of the OUG no. 193/2002.

In connection with the above-mentioned, it should be recalled that, originally, the OUG nr. 193/2002 obliged the public institutions and the economic entities providers of public services to ensure the technical conditions to accept the electronic payments starting with February 1st 2003 in municipalities and November 1st 2003, in cities.

The appropriate payment terminals shall be supplied by the bank accepting card payments

All necessary payment terminals shall be supplied to the economic entities, public bodies and legal persons subject of the law by the banks accepting card payments.

As regards the providers of public services and public bodies, the supply with payment terminals shall be performed, as a general rule, in accordance with the public procurement procedures, in order to select the competent bank to manage, operate and control the activities related to electronic transfer of funds.

**COMMERCIAL
COMPANIES****New obligations for the tradesmen and authorities in connection with the control activity**

In accordance with the Law no. 252/2003 (the Official Gazette no. 429/18.06.2003) the taxpayers - legal persons registered with the Trade Registry and authorized according to the legal provisions in force - will be obliged to organize and hold the sole control register. As regards the rest of the taxpayers, the organization of the register is not compulsory, but optional. The entrance into force has been set after 30 days of the publication in the Official Gazette.

The "sole control register" is the evidence document to be kept at the taxpayer's headquarters and at each registered subordinated unit authorized to function, in which shall be mentioned all controls performed by the special controlling bodies (including in the following areas: fiscal, public health, construction, consumer protection, labor, fire prevention, etc) at the respective taxpayer.

All mentions in the control register shall be performed under the signature of the legal representative of the controlled persons and of the control body.

The sole control registries should be purchased from the general directions of the public finances within 30 days of the entrance into force of the law (respectively of the date of their registration, in case of the newly-established taxpayers).

The non-compliance with the duties to purchase the registry within the delays prescribed by the law, or to present it to the controlling body upon request, is punished as contravention. The related sanction is a fine between ROL 5.000.000 - 20.000.000.

Additional duties for the control bodies

The setting-up of the sole control register incurred supplementary obligations for the controlling bodies, too. Thus, before commencing any controlling activity, the authorized bodies are obliged to mention in the register the basic data required by art. 3 al. 2 of the law and to consult the controlling documents concluded in the past in connection with their area of activity. Subsequently, at the end of the control, in the registry shall be written down the number and date of the controlling report concluded.

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