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**REVISION OF THE  
CONSTITUTION**

The revisional process of the Constitution has entered the final stage following the issuance by the Romanian Parliament of the “Law on the revision of Romanian Constitution” as well of the Law No. 375/2003 on the organisation and conducting of the national referendum for approving the amendments proposed by the Parliament.

Given the importance of this process, we deem useful to briefly refer hereunder to certain significant aspects within the list of proposals for amending the Constitution, the aspects which shall produce, directly or implicitly, considerable effect on the legal framework applicable to business relationships.

**Amendments and specification relating to the ownership regime in Romania**

One of the relevant amendments in this respect refers to the constitutional regime of the right of ownership, regulated by art. 41 of the Constitution. Therefore, under the new Constitution proposed, an amendment is brought to the paragraph 2 of art. 41 and it provides that “*the private ownership is equally guaranteed and protected, whoever the owner*”. Thus, it expressly states that in Romania the private ownership is not only protected, but it is also expressly guaranteed by the State. Thereby, it tries to avoid any dispute or possible doubts about the degree of protection guaranteed by the State towards the private ownership.

Another highlight of the new Constitution proposed is that the paragraph 2 of art. 41 grants rights to the foreign citizens and stateless persons to acquire the right of private ownership over the lands within Romania subject to accession process to the European Union, as well as in other cases, under the conditions of the law. As per the previous Constitution, the article 41 paragraph 2, thesis II provided that “*the foreign citizens and the stateless persons are not entitled to acquire the private ownership right over the lands*”, the new proposed amendment provides that “*the foreign citizens and the stateless persons are entitled to acquire the private ownership right over the lands only under the conditions resulting of Romania’s accession to the European Union and of other international treaties to which Romania is part, on reciprocity basis, under the conditions set forth by organic law, as well as by legal inheritance.*”

At the same time, the content of article 41 has been extended by introducing an additional paragraph (paragraph 3<sup>1</sup>) which provides, with constitution value, the interdiction of nationalization or of any other measure for “*forcibly passing over certain private properties under the public ownership based on the owners’ social, ethnic, religious, political affiliation or by any other discriminatory nature*”.

Subsequently, the article 135 (“Property”) has been amended. Thus, it provides that the public ownership is, in its turn, not only protected but also guaranteed by the law. It has also redefined the categories of goods representing the exclusive object of the public property.

### **New elements with respect to the economical rights and liberties**

Concerning the fundamental rights and liberties, the Law issued for revising the Constitution is proposing the enlargement of their sphere by adding a new article (art. 41<sup>1</sup>). Named "Economic freedom", it shall have the role to set the constitutional principle under which *"the free access of the person to an economic activity, the free initiative and the exercise of the same under the law are guaranteed"*.

### **Restructuring the right of the person aggrieved by a public authority**

Important amendments are brought to the art. 48 of the Constitution ("Right of the person aggrieved by a public authority"), namely the paragraph 3 that regulates the right of the aggrieved person to obtain indemnities from the State. Under the former Constitution, article 48 paragraph 3 states that the State is liable from the patrimonial point of view, according to the law, for the prejudices caused by the miscarriage of justice in the criminal trials only. But the new constitutional text is bringing about several new elements. Firstly, it proposes to extend the State's patrimonial liability for all the prejudices caused by any kind of miscarriage of justice and not only for those committed in the criminal trials. Secondly, in the attempt to identify efficient remedies for dispensing the serious issues that are presently pending before the Court of Justice, it was established as a principle that the liability of the State, set under the law, does not remove the liability of magistrates *"who have*

*discharged their duty in ill faith or with serious negligence"*.

### **Emergency Ordinance - new issuing conditions and proceedings**

The article 114 pertaining to the Government's competence to issue emergency ordinances is proposed to be amended and completed in several aspects. The principle provision referring to the cases when the Government was authorized to issue such enactments is being rephrased, by putting forth that (par. 4) *"The Government can pass emergency ordinances only in extraordinary cases whose regulation cannot be postponed, the Government being liable to justify the emergency in the content of such ordinances"*. Moreover, the proposed amendment lays out in detail the conditions under which the emergency ordinances can come into force, dates for the approval or rejection of parliament procedures, fields exempted from the regulation of emergency ordinances etc.

### **Introduction of EURO**

In anticipation of Romania's accession to the European Union, the art. 136 ("Financial system") paragraph 2 was completed with an additional thesis under which the Parliament can decide, by organic law, the circulation and replacement of the domestic currency with the currency of the European Union.

### Formal and structural specifications pertaining to the justice system

The process of constitutional revision has also caused the amendment of the texts referring to the judicial system, thereby it has brought about several completions and amendments in this respect. From amongst them, we are mentioning that the art. 125 ("Courts of Law") was rephrased by changing the denomination of the supreme instance from the Supreme Court of Justice into the High Court of Cassation and Justice, by setting its role at the constitutional level, namely, to ensure the *"uniform construing and enforcement of the law by the other courts of law, according to its competence"*. In compliance with the new phrasing of the art. 127 par. 2, Romanian citizens belonging to national minorities will acquire the right to use their native language in Court.

### MISCELLANEOUS

#### Republication of the Law on the value added tax

It is to be noted that the Law on the Value Added Tax has been successively amended, both by the approving law and by the Government Ordinance No. 36/2003 on the correlation of certain provisions of the tax legislation.

The republished version of the Law No. 345/2002 includes the amendments brought by the above-mentioned enactments.

### Methodology and criteria relating to the personnel employment in work places under special conditions

The employment in work places under special conditions has been generically regulated by the Law No. 19/2000 on the public system for pensions and other social security rights. Pursuant to art. 20 paragraph (3) of this law, as subsequently amended and completed, which provided the need to pass a government decision that regulates criteria and methodology relating to personnel employment in work places under special conditions, the Government Decision No. 1025/2003 has been published in the Official Gazette No. 645/2003.

### Procedural aspects concerning the framing of work places depending on the conditions of employment

The framing process of work places under special conditions shall be carried out by involving the representative unions pursuant to the law or, as the case may be, the employees' representatives within the labour safety and health committee or the person in charge with the labour protection.

Detailed provisions of the phases to be carried out, of the criteria and documentation necessary for framing the work places under special conditions are provided in the charge of the employer who shall involve the above-mentioned persons in the procedures.

The steps to be followed mainly are (i) the nominalization of work places for which the framing under special conditions is requested, (ii) the request to verify the activities included in the list of the concerned work places, (iii) the check of the named work places put forth by the competent territorial labour inspectorates or the National Commission for the Control of Nuclear Activities, (iv) the performing of a

technical appraisalment and of a medical test.

The detailed list of work places whose nature of activities performed can be framed under special conditions is included in an annex to the above-mentioned Government Decision.

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