LEGAL UPDATE

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JULY 2004

Number VII

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LABOUR LAW

Announced by the provisions of the Labour Code (entered into force on March 1st 2003), the real opening of the temporary work market can be effectively carried out only by the passing and coming into force of the secondary implementing legislation – Government Decision no. *938/2004 concerning the conditions for setting up and functioning, as well as the authorization procedure, for the authorisation of the temporary work agent* (the document is published in the Official Gazette no. 589 as of July 1st 2004).

Authorisation criteria as TWA

The authorisation as TWA is granted to the entities that comply with the following conditions: (i) they are companies, having within their scope of activity "selection and placement of workforce"; (ii) they do not register debits towards the state budget/local budgets or debits resulting from non-payment of taxes and contributions associated to the labour relationships; (iii) they are not registered within the fiscal records with actions sanctioned by the financial, customary regulations or by those regulations referring to the financial discipline; (iv) they have not been sanctioned for infringing the provisions of the labour, commercial and fiscal legislation and (v) they constituted the required financial guarantee (amounting to 25 minimum gross national basic salaries, plus the related contributions, such as owed by the employees on the grounds of the work relationships).

A brief revision of these conditions reveals the possible difficulties that may arise at the time of the application, as resulting from: the stressed severity of some of the conditions (according to point (iii) mentioned above), the imprecise drafting of others (according to point iv) and the insignificant guarantee required prior to the authorisation.

Issuance of the functioning authorisation

As to the authorisation procedure, the Ministry of Labour, Social Solidarity and Family has been designated as the competent administrative authority. Thus, the analysis of the authorisation application and issuance of the functioning authorisation shall be done by the directions for dialogue, family and social solidarity, within 30 days as of the registration of the application. The authorisation shall be followed by the registration of the TWAs with the National register for the evidence of TWAs, to be held by the Ministry of Labour, Social Solidarity and Family.

The authorisation shall be valid for two years, and it may be extended at the end of the validity period for another two years. The authorisation may be granted for an unlimited period only to those

TWAs that carried out their activity uninterruptedly for a 4-year period.

As to the rules governing the TWA's functioning, GD no. 938/2004 brings supplementary details with regards to the obligatory contents of the temporary work agreements (that are concluded between the TWA and the temporary employee) and the agreements for placement of the temporary employee (concluded between TWA and the user). Moreover, the enactment reaffirms the rules pursuant to which the temporary work agreement should be concluded, as a general rule, for a single temporary work mission. Nevertheless, in case that the agreement is concluded for several missions, its duration should not exceed 18 months.

The issuance of the first functioning authorisations for TWAs and the commencement of their activity are waited to occur after September 1st, 2004, after the coming into force of GD no. 938/2004 (the enactment shall enter into force after 60 days of its publication into the Official Gazette).

COMMERCIAL LAW

Aiming at promoting a coordinated regulation in the field of the consumers' protection, as well as at making the internal legislation compatible with that of the EU, the Parliament has adopted the Law no. 296/2004 (the Official Gazette no. 593) concerning the Consumption Code. These objectives are envisaged for medium and long term, as the enactment is designated to come into force only after January 1st, 2007.

Scope of application

The Consumption Code is applicable to legal relationships between economic entities and consumers with regards to acquisition of products and services in order to assure the consumers' complete and correct information about the essential characteristics of products and services, the defence of the consumers' legal rights and interests against abusive practices, their participation to decision making for their own interest.

The Code addresses to a large spectrum of persons. Its provisions are mandatory for all consumers and economic entities that carry out commercial acts and actions, according to the law. In the meaning of the Consumption Code, *consumers* means any natural persons or group of natural persons constituted in associations, who purchase, acquire or consume products or services outside their professional activity. The economic entities include natural or legal persons, authorized, which, as a professional business, manufacture, import, deposit, transport or sell products or parts thereof, or render services.

Within this framework, the Code regulates aspects of first importance for this field: the obligations of economic

entities, the consumers' rights, the security of products, the legal framework with regards to prices and products, the activity of NGOs for the consumers' protection, the consumers' information and the advertising for products and services, the consumers' rights as to the conclusion of the agreements, etc.

Economic entities' obligations

As to the obligations that must be observed by the economic entities, the Code takes over some of the principles and obligations already provided by the legal framework in force, but it also restates and adds other new obligations.

Shortly, we note the general rule according to which the expenses related to the replacement of the defective products, their restoration or return of their value shall be borne by the seller. Such amounts shall be subsequently recovered by the manufacturer, or as the case may be, from the previous importer or anterior supplier from the distribution chain, if not otherwise agreed by the contract concluded among such persons.

In case of the products that have been or may be identified with flaws, the manufacturers and/or suppliers become obliged to withdraw them from the market, to replace or repair them. In case such actions cannot be taken in a reasonable period of time, as established by the agreement between the seller and the consumer, and without any significant inconvenient for the consumer, the consumer must be correspondingly compensated.

As to the manufacturer's responsibility for the defective products, we mention that the manufacturer shall be held liable, in accordance with the Consumption Code, not only for the current and the future damage caused by the defective product, but also for the damages caused as a cumulated result of the defective product with an action or an omission by a third person.

Advertising regarding products and services

As an important means for the information of consumers, the advertising must comply with the requirements established by the Consumption Code: to be decent, correct and performed in the spirit of the social responsibility. The advertising which, among others, is deceptive, subliminal, discriminatory (on grounds of sex, race, religion, social origin, etc.), injures the human dignity, the public morality or the private life of persons, etc. is forbidden.

As a general rule, in case of infringing the provisions provided by the Consumption Code, it shall be held responsible the author, the advertising producer and the legal representative of the mass-media whereby the advertisement has been disseminated,

jointly with the person to whom the advertisement refer. It shall be exempted the case in which other persons are specifically held liable, pursuant to express provisions of the law.

The person to whom the advertising refer must be able to prove the accuracy of the statements, indications or presentations from the advertising material and may be obliged by the competent authorities to prove such accuracy within the term established by the law.

The advertising for certain products may be totally or partially forbidden in order to protect, inter alia, the consumers' life, health, security and correct informing.

FINANCIAL LAW

The strategy and the legal framework which shall govern the process aimed at reducing the nominal value of the national currency - Romanian lei (ROL) have been approved by the Law no. 348/2004 concerning the national currency devaluation (published in the Official Gazette no. 664).

Reduction of the nominal value. Issuance of the new coins and banknotes

Pursuant to the Law no. 348/2004, starting with July 1st, 2005, the nominal value of the national currency shall be reduced, so that old 10,000 ROL (circulating at the respective time) shall be changed into a new 1 ROL. Commencing with the same date, the new banknotes and coins shall be issued.

As to the current banknotes and coins (the old Romanian lei), they shall have a circulating power until December 31st, 2006 and shall be accepted for payment at the value calculated in accordance with the rate of exchange of 10,000 old ROL/1 new ROL.

Rules applicable for transitory periods after devaluation

We specify that the prices and tariffs of services must be indicated in both the old currency and in the new one, during the transitory period March 1st 2005 – June 30th 2006.

The enactment sets out the rules which shall govern the conversion of: the rights and obligations denominated in the old currency, the amounts provided by the legislation in force, the registrations with the Trade Registry and the accounting records.

The goods, rights and obligations arisen before July 1st, 2005 (denominated in old currency) shall be converted in accordance with the said exchange rate, on the basis of the situation existing existed on June 30th, 2005. The conversion shall take place by the

operation of law, without any statement to be issued by the authorised persons concerned.

The amounts provided by the enactments issued before July 1st, 2005 shall be replaced with the amounts expressed in the new currency, as resulted by dividing them to 10,000.

Starting with July 1st 2005, the National Office of the Trade Registry shall proceed to the registration, ex officio, of the new values resulted by the devaluation in respect of the share capital, the shares and social parts of the registered persons. The National Office of the Trade Registry shall register both the old value and the new one, as resulted after the conversion. The publication in the Official Gazette of these amendments shall not be necessary.

With respect to the accounting records, starting with the same date of July 1st, 2005 and until December 31st, 2005, the financial situations shall be drafted both in old currency and in the new currency. The yearly financial situations for 2005 shall be drafted in the new currency, according to the conditions that shall be established by order of the Minister of Finance.

COMPANIES

A new law enactment aiming at the encouragement of setting up and development of small and medium enterprises (SMEs) has been passed by the Romanian Parliament – i.e. the Law no. 346/2004 concerning the stimulation of setting up and development of SMEs. The law formally abrogates the former enactment (i.e. the Law no. 133/1999 concerning the stimulation of private entrepreneurs to set up and develop SMEs, as subsequently amended), but it takes over a large part of the legal aspects which existed within the previous legislation.

Definition of SMEs

The definition given by Law no. 346/2004 takes over a series of the previous characteristics, by qualifying as SMEs the enterprises that cumulatively fulfil the following criteria: (i) the medium annual number of employees is smaller than 250; (ii) the annual turnover is up to 8 millions EURO, or the annual accounting result does not exceed 5 millions EURO and (iii) comply with the criterion of independence, such as defined by the law.

The law include within the spectrum of SMEs any forms of organization of the economical activities which are patrimonially autonomous, authorised in accordance with the laws in force to carry out commercial activity in order to obtain profit, under circumstances of competition. The law expressly qualifies as enterprises: the commercial companies, the cooperative companies, the natural persons that carry out

economical activities independently and the familial associations authorised in accordance with the law.

The distinction between microentreprises, small and medium sized enterprises is still made in accordance with the employees' annual medium number: up to 9 employees – microentreprises; between 10 and 40 employees – small enterprises; from 40 to 249 employees – medium enterprises.

Stimulation of the establishment and development of SMEs

As to the law's objective to stimulate the establishment and development of SMEs, the law enumerates a number of intentions, programs and general principles, covering topics like procedures regarding SMEs' establishment, actions for stimulating the development of these enterprises, encouragement of the research-development and innovation activities carried out by SMEs, some incentives concerning the SMEs' transfer towards the persons belonging to the same family, etc.

We note that the concrete implementation of such programs and initiatives shall depend, to its greatest extent, upon the further secondary enactments which must be passed by the Government and the competent public authorities concerned.

The access of SMEs to public services and assets that belong to state entities

Moreover, Law no. 346/2004 regulates the legal possibilities whereby SMEs should have access to the available assets of the autonomous state corporations ("regii autonome"), national companies and state-held companies, with the observance of the legal provisions regarding the public property and privatisation.

Thus, the law grants SMEs the priority right of access to the rent, concession, or leasing of the available assets that belong to the above mentioned entities.

The available assets used by SMEs on the basis of the titles recognized by the legislation (such as renting agreements, goodwill lease/management ("locatie de gestiune") of joint-venture agreements) may be sold or may become subject of certain real estate leasing agreements with irrevocable sale clause, at the request of SMEs, in exchange of a price established on the basis of the methodology provided by Law no. 346/2004.

SMEs also have a *preference* right to purchase the available assets that are located in the immediate neighbourhood of the assets owned by the SMEs. Non-observance of such preference right is sanctioned by the absolute nullity of the respective transfer.

Moreover, SMEs have priority to buy the available assets of the state-controlled entities above-mentioned, by participating to open calling auctions, organized only for SMEs. In case that the respective assets have not been acquired by such auction, other auctions may be organized, with free access of third parties, in accordance with the legislation in force.

The sale of assets under such conditions may be performed with the payment in instalments scheduled over a period of minimum 3 years, with an advance of maximum 20%.

Priority access to the public procurement of products, works and services

Among other concrete advantages listed by law in favour of SMEs, these should benefit of reductions of up to 50% for the criteria related to the turnover, the guarantee for participation and the performance bond, which may be required by the public procurement of products, works and services.

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