



Legal update by reference to the months
of January & February 2013

Legal Brief

Eversheds Lina & Guia SCA

Banking Substantial amendment of Law no. 193/2000 on unfair terms

[Government Emergency Ordinance no. 4/2013 amending Law no. 76/2012 regarding enactment of Law no. 134/2010 on Civil Procedure Code \(published in the Official Gazette no. 68 of 31 January 2013\)](#)

The Emergency Ordinance no. 4/2013 postponed the entry into force of Law no. 134/2010 on Civil Procedure Code until 15 February 2013. Amongst other important amendments, the ordinance brought some substantial changes to Law no. 193/2000 on unfair terms in contracts between traders and consumers.

Following the amendment of articles 12 and 13 of Law no. 193/2000, a court that finds unfair terms in a contract shall impose an obligation to the professional (i.e. bank) to modify all pending adhesion contracts (in Romanian

“contracte de adeziune in curs de executare”) which contain unfair terms - by eliminating such terms, as well as to eliminate the unfair terms from previous pre-formulated contracts which are envisaged to be used in the current activity of the professional. This will substantially relieve the courts from repeating the reasoning for determining unfair terms in a standard contract when proceedings are brought on similar facts. According to the ordinance, these provisions shall become applicable starting with 1 July 2013.

Real Estate New Procedure for the Registration of Rental and Fiduciary Agreements

[Order no. 1985/2012 on the approval of the procedure for registration of fiduciary and rental agreements as well as for approving the template and content of some standard forms \(published in Official Gazette of Romania no. 16 of 09 January 2013\)](#)

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Order no. 1985/2012 establishes a registration procedure with the tax authorities for the fiduciary and rental agreements in order to make them enforceable, according to the relevant provisions of the New Civil Code.

A. For rental agreements the following rules shall apply:

After entering into a rental agreement, the legal entity acting as landlord shall register the rental agreement at the relevant tax authority. The registration requires filling in a standard registration form (in Romanian “Declaratia de inregistrare a contractelor de locatiune”), which can be found in the appendix of the order, and also submit the original version of the rental agreement and a copy.

B. For the registration of fiduciary agreements the following procedure was introduced:

The fiduciary has to register the fiduciary contract at the relevant tax authority within 30 days as of the date the concerned agreement was concluded. Responsibility lies within that tax authority at which the fiduciary usually pays his taxes. In this respect, the concerned contributor has to fill in a standard form (in Romanian, “Declaratia de inregistrare a contractelor de fiducie”) which can be found in the appendix of the present order, and shall also present the original version of the fiduciary contract and a copy.

Any changes in and termination of such fiduciary contracts must be announced within 30 days as well.



Gradual payment of compensations for citizens who were dispossessed of their properties

Government Emergency Ordinance no. 10/2013 for the gradual payment of compensation under Law no. 9/1998, Law no. 290/2003 and Law no. 393/2006 (published in the Official Gazette of Romania no. 114 of 28 February 2013)

We mention, inter alia, the most important changes brought by this act:

- Compensation payment shall be carried out in equal annual installments over a period of 10 years starting with the year following the date the payment title is issued;
- For unpaid compensations outstanding when the ordinance entered into force, compensation payment shall be carried out starting with January 1, 2014;
- The amount of a precise installment shall not be less than 20,000 RON. Each installment will be updated with the consumer price index;
- Establishing a deadline of 18 months from the entry into force of the emergency ordinance, in order for the County Commission for applying Law no. 9/1998, Law no. 290/2003 and Law no. 393/2006 to further analyze and solve the claims for compensations which remained unsolved.

Protocol on performing real estate publicity operations

Enactment no. 155/2013 referring to the protocol concluded between the National Agency of Cadastral and Real Estate Publicity (ANCPI) and the National Union of Public Notaries from Romania (UNNPR) regarding the proceedings on the performance of certain real estate publicity operations, as provided by the Law no. 7/1996 (published in the Official Gazette of Romania no. 48 of 22 January 2013)

Given that Law no. 7/1996 on cadaster and real estate publicity introduced in July 2012 the principle under which a person possessing an immovable could be registered as owner of the concerned immovable, the Enactment no. 155/2013 further sets up and details the exact steps and conditions of such procedure.

In this respect, the relevant Office of Cadastral and Real Estate Publicity shall issue a

certificate attesting that the procedure for displaying the technical documentation was duly fulfilled and the person possessing such immovable was not challenged. The concerned person shall be recorded with the land book on the basis of a separate certificate issued by the public notary who shall take into account the previous certificate issued by the Office of Cadastral and Real Estate Publicity.



Labor

A new level of the gross minimum base salary

Government Decision no. 23/2013 for the establishment of the gross minimum base salary guaranteed in payment (published in the Official Gazette no. 52 of 23 January 2013)

As of 1 February 2013, the country gross minimum base salary that is guaranteed in payment is set to 750 lei per month, for an average full time schedule of 168,667 hours per month in 2013, representing 4,44 lei per hour.

As of 1 July 2013, the country gross minimum base salary that is guaranteed in payment is

set to 800 lei per month, for an average full time schedule of 168,667 hours per month in 2013, representing 4,74 lei per hour.

For staff in the public sector, the basic salary, according to classification, cannot be lower than the minimum gross salary guaranteed in payment.

Environment

The new list of natural mineral waters recognized in Romania

Order no. 4/2013 approving the list of natural mineral waters recognized in Romania (published in the Official Gazette no. 29 of 14 January 2013)

The President of the National Agency for Mineral Resources issued the order approving the List of natural mineral waters recognized in Romania.

The Annex comprises a total of 61 commercial mineral waters appointments, mentioning the name of the source and place operation.

Energy

A new tax on monopolized structures in the electric energy and natural gas sector

The Ordinance no. 5/2013 issued by the National Authority in the Energy Sector establishes a new tax on monopolized structures in the electric energy and natural gas sector beginning with 1 February 2013 (published in Official Gazette of Romania no. 52 of 23 January 2013)

The taxes will amount to 0,1 RON per MWh for energy or gas transported towards another distributing system; 0,75 RON per MWh distributed to the final consumers and 0,85 RON

per MWh which was delivered directly to the final consumer without any other distributor interposed between production and delivery.



Acquisition price for natural gas from internal production

Government Decision no. 22/2013 establishes prices for natural gas coming from national production on the regulated market up until 14 October 2014 (published in the Official Gazette of Romania no. 52 of 23 January 2013)

The prices for non-domestic clients, excepting producers of energy (heat) for natural gas used in the production of energy in cogeneration plants as well as heating plants for household consumption, will gradually raise

from 49,00 RON in February 2013 to 119,00 RON per MWh in October 2014. For domestic clients and producers of energy, the prices for internal clients will only rise from 45,71 RON to 54,60 RON per MWh.

Special measures for the taxation of the exploitation of natural resources other than natural gas

Government Ordinance no. 6/2013 contains provisions as to the taxing of the exploitation of natural resources other than natural gas (published in the Official Gazette of Romania no. 52 of 23 January 2013)

According to the ordinance, the exploitation of natural resources other than natural gas is subject to a tax amounting 0,5% of the income deriving from the exploitation. This

regulation applies amongst others to coal mining, wood clearing, crude oil and mineral resources exploitation.

Dispute resolution

The New Civil Procedure Code

Law no. 76/2012 for the enforcement of Law no. 134/2010 on the Civil Procedure Code entered into force following Government Emergency Ordinance no. 4/2013 (published in the Official Gazette no. 68 of 31 January 2013)

On 15 February 2013, The New Civil Procedure Code, approved under the provisions of Law no. 76/2012, entered into force.

The entry into force of the new code appeared as a social must, given the former status of the Romanian civil procedure legislation which was divided into numerous regulations and was applied non-uniformly by the courts. Moreover, Romania's status as an EU member state and as party to numerous international conventions required the amendment and harmonization of the law, with a view to facilitate the access to justice for both natural and legal persons located in Romania or abroad.

The outcome envisaged by the enactment of the New Civil Procedure Code is to provide

justice seekers, on the one hand, and professionals (lawyers, magistrates, bailiffs, etc.) on the other hand, with a simplified procedure, facilitating their access to justice both along the litigation stage and the enforcement stage.

In light of those mentioned above, please find below a general overview of the most important amendments brought following the enactment of the New Civil Procedure Code:

- Express statement of the fundamental principles of the civil procedure, considered up until the enactment only by way of doctrine and jurisprudence;



- Update of summoning and communication means by introduction, along with the formerly recognized means, of the possibility to apply these proceedings via calculus methods;
- Grouping all the causes that could lead to incompatibility of magistrates, found in the contents of the former codification under the umbrella of two separate institutions - reasons of incompatibility and reasons for withholding - under a sole format, that of the institution of incompatibility and extending it over all the categories of participants to the civil lawsuit with the exception of the parties;
- Introduction of the obligation to participate at the meeting concerning the benefits of mediation in claims concerning consumer protection, malpractice, labor contracts, civil lawsuits for amounts smaller than Lei 50.000 etc.;
- Review of provisions regarding material competence of the courts by stating the rule according to which the Tribunal replaces the District Court as common law court for matters of first instance;
- Restructuring of provisions referring to organization of the civil hearing: written stage, research of the matter, debate on matters of fact, having the same purpose of reducing unnecessary workload for the courts and reducing the level of judgment postponement;
- Introduction of the Challenge action regarding postponement of trial, as a separate procedure with a view to penalize any abuse of procedure;
- Redesigning the structure of the means of challenging a decision by restating the Appeal as a mandatory stage of contesting a decision;
- Restructuring of the enforcement procedure with a view to maximizing the chances to effectively enforce;
- Statement of special procedures, formerly inexistent or enacted under separate normative acts - Summary payment procedure, Procedure concerning claims amounting less than Lei 10.000, International Civil Lawsuit etc.

To conclude, we welcome the enactment of the New Civil Procedure Code as this will provide all the interested parties with modern legal means in their constant struggle to effectively have their rights acknowledged.



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