LINA & GUIA
ATTORNEYS AT LAW

Legal update by reference
to the months of **May** and **June 2010**

Legal Brief
Lina & Guia SCA

Company News

New offices in Bucharest for Lina & Guia

July 19th, 2010 — We are pleased to announce the relocation and expansion of our offices in Bucharest.

It is time for a new beginning.

This relocation represents an important step in our development strategy and comes as a natural result of our continued fast paced growth during the last year.

We are pleased that the new offices provide a high quality environment to our people and we trust our clients will enjoy the new settings.

We take the opportunity to thank you for choosing to work with us on your projects and for your ongoing support.

Our new contact details are:

Victoria Center, 9th Floor,
145 Calea Victoriei, District 1,
010072 Bucharest,
Phone: +40.21.311.2561,
Fax: +40.21.311.2562.

We are operational at this new location as of July 19th, 2010.

Warm regards,

Mihai Guia
Managing Partner

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Corporate/ Commercial

New provisions impacting on Corporate Governance and Business Confidentiality

The Government Emergency Ordinance no. 54/2010 (the "**EOG 54/2010**") for preventing tax evasion, published in the Official Gazette no. 421 of 23 June 2010. EOG 54/2010 came into force on the date of publication.

Besides the amendments brought primarily to the Romanian Fiscal Code, the EOG 54/2010 had also a significant impact on several corporate law matters, further regulating new restrictions on transfer of shares in a limited liability company, the liability of directors in the context of insolvency, an expanded joint liability for directors and other persons for tax obligations and the access for tax authorities to sensitive bank account information.

- According to EOG 54/2010, upon submission of shareholder resolution approving the transfer of shares in a limited liability company within 15 days of its issuance, the relevant trade register office has the obligation to notify immediately a copy of such resolution to the National Agency of Fiscal Administration and to the relevant public finance department.

  Company's creditors, including tax authorities, if the case, as well as any persons damaged as a result of the shareholders' resolution approving the share transfer may oppose to the decision in court requesting compensation for their damages. The opposition is to be made within 30 days of the date of publishing in the Official Gazette of the shareholder resolution or the updated articles of association.

  As a result of the above-mentioned provisions, the transfer of shares will be effective either: (i) as of the date when the 30 days opposition term expired, in the absence of any filed opposition or (ii) as of the date of communicating the court decision for rejecting the opposition, in case an interested person lodged such complaint. Also, EOG 54/2010 now expressly requires that the deed for the transfer of social parts be filed with the Trade Registry.

- Additionally, EOG 54/2010 provides for several cases where the directors, shareholders or other persons might be jointly held liable with a debtor for its tax liabilities.

  In this respect, please note that EOG 54/2010 expressly regulate joint liability for tax obligations of (i) directors, company's shareholders and other persons, in case they intentionally caused the company have less revenues or assets than the outstanding tax liabilities, and (ii) affiliated persons (not necessarily deploying the same activity as the respective company) and having some special types of relationships with the company's clients, suppliers, employees or regarding the company's assets.

Furthermore, there is no longer a time-limit for engaging the joint liability of third persons who acquired in bad faith assets from the company, hence affecting the company, no longer capable to observe its tax obligations (previously, the law expressly referred to a 3-year period in this respect).

Moreover, as per the new provisions, the liability of the directors and other persons could be engaged when (i) a director has failed to fulfil, in bad faith, its legal duty to request commencement of the insolvency procedure for unpaid tax obligations, (ii) a director or other persons have caused, in bad faith, the company not to declare or not to pay due tax obligations or (iii) a director or other persons have caused, in bad faith, the reimbursement to the company of amounts from public budgets, which were not owed to the company.

- Also, several companies may have the same postal address only if the specific construction (total surface and rooms number), allows for the functioning of multiple companies distinct spaces (*the rules regarding the companies with at least a common shareholder or if one of the shareholders owned the construction are no longer applicable*). The number of the registered companies may not exceed the number of distinct separated spaces in the construction.

  In this respect, the EOG 54/2010 states that upon registration of the company, as well as upon change of the registered office, the company shall submit to the relevant trade registry office: (i) a document proving the right to use the premises as headquarters (e.g. the rent agreement), already registered with the fiscal authority within the area of the National Agency for Fiscal Administration where the premises serving as headquarters is registered and (ii) a certificate issued by the fiscal authority proving that said premises are not already rented/used by other parties. In case that according to such certificate, the premises are already rented/used by other parties the company needs to submit an original affidavit attesting that the structure and net area of the premises allow the operation of several companies in different rooms or distinctly divided areas.

- Finally, EOG 54/2010 also provides for a new obligation for credit institutions to communicate, upon request by tax authorities, all relevant requested data (account balances regarding the concerned account holder, the authorized signatories related to the bank account etc.)

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New measures regarding registration activity within Trade Registry

Law no. 84/2010 approving Emergency Government Ordinance no. 116/2009 on the establishment of several measures regarding registration activity within the Trade Registry ("**Law 84/2010**"), published in the Official Gazette no. 323 of 17 May 2010.

Law 84/2010 institutes a series of new measures regarding the registration activity of companies in the Trade Registry. The normative deed brings certain amendments to the Emergency Government Ordinance no. 116/2009, also stipulating the substitution of the delegated judge with the director of the trade registry office in respect of solving registration requests.

The amendments and completions instituted by Law 84/2010 mainly concern the following aspects:

- The jurisdiction of the director of the trade registry office and/or of the person designated by the above director in respect of solving registration requests has been extended until 21st of September 2010;
- The registration requests submitted to the trade registry office that were suspended by the delegated judge before January 2010 will be reinstated either *ex officio*, if the period of suspension exceeds six months or, at the party's request, if this period has not expired;
- Further to the pronunciation of judiciary dissolution or to the ascertainment of legal dissolution, the jurisdiction for the appointment of a liquidator belongs to the director of the trade registry and/or to the person designated by the director of the trade registry, who also takes decisions regarding the payment of the liquidator's fee (fixed quantum of Lei 1,000);
- The requests regarding the ascertainment of legal dissolution of legal entities or deregistration of legal entities from the trade registry, as provided by law, fall within the jurisdiction of the commercial tribunal or the commercial section of the tribunal where the legal entity has its headquarters.
- The requests regarding the ascertainment of legal dissolution of legal entities or deregistration of legal entities from the trade registry, as provided by law, fall within the jurisdiction of the commercial tribunal or the commercial section of the tribunal where the legal entity has its headquarters.
- The requests regarding the correction, interpretation or amendment of the delegated judge's resolution fall within the jurisdiction of the commercial tribunal or within the jurisdiction of the commercial section of the tribunal where the legal entity has its headquarters.
- The requests for registration with the trade registry of any mentions regarding mergers, trans-frontier mergers and spinoffs fall within the jurisdiction of the commercial tribunal or the commercial section of the tribunal where the legal entity has its headquarters. The above requests are submitted to the trade registry which forwards them to the relevant court within three days of their submission.

Banking, Finance and Financial Services

New consumer protection rules applicable to credit contracts

Government Emergency Ordinance no. 50/2010 regarding consumer credit agreements was published in Official Gazette Part I, no. 389 of June 11, 2010 (the „**Ordinance 50/2010**"). The Ordinance 50/2010 came into effect within 10 days after its publication in the Official Gazette.

Given the necessity to transpose the provisions of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 („Directive 2008/48/EC"), for which the deadline was June 11th, 2010, the Government approved the Emergency Ordinance no. 50/2010, thus repealing the former regulations, i.e. Law 289/2004 regarding the legal regime of consumer credit agreements.

As concerns the scope of application, the Ordinance 50/2010 applies to credit agreements, including mortgages and real estate loan agreements. Under these circumstances, the Law no. 190/1999 regarding mortgage loans for real estate investments shall apply only to the agreements concluded with legal entities, except for certain provisions that will also apply to contracts with consumers.

The Ordinance 50/2010 applies both to new credit agreements and credit agreements in progress, irrespective of their value and it provides for a 90 days period as of its coming into force in which the credit institutions should take the necessary steps in order to comply with its provisions. Therefore, by September 2010, the credit institutions must amend the credit agreements in progress and must bring them in line with the new legal provisions.

Please note that the National Authority for Consumer Protection ensures the compliance of the credit institutions with the provisions of the Ordinance 50/2010 and has the authority to impose the penalties provided by the law. Moreover, it may decide, in addition to the imposition of fines, to suspend the crediting activity until it becomes legitimate.

Among the major amendments to the regulatory framework governing consumer credit agreements brought by the Ordinance 50/2006, please note the following new regulations:

- the limitation of the fee for early repayment at 1% (if the period between the early repayment date and the date agreed for the termination of the credit agreement is higher than 1 year), respectively 0,5% (if such period is smaller than 1 year);
- the limitation of the number of fees related to the credit agreements to four: (i) the administration fee, (ii) the early repayment fee, (iii) the fee for the delay payment and (iv) the sole fee for the services provided at the consumers' request;
- the removal of the fee for early repayment in certain cases, among which we mention the case where the early repayment occurs in a period in which the interest rate is not fixed;
- the possibility for the consumers to withdraw from the contract without giving any justification, by notifying the credit institution, within 14 days after the conclusion of the contract or receipt of information

provided by the law, when this date is subsequent to the conclusion of the contract;

- the prohibition for the credit agreements to contain clauses whereby (i) the consumer is obliged to keep the secrecy of the contractual provisions, (ii) the creditor may rescind the contract or penalize the consumer where the creditor's reputation has been damaged;
- the possibility for the credit institution to adjust the interest by reference to EURIBOR/LIBOR/ROBOR/NBR reference interest rate, according to the credit currency, to which the credit institution may add a certain margin that will be fixed for the entire credit term; the margin may be modified only as a result of legislation changes and/or reduced when the credit institution's business policy allows it;
- where a consumer is in such situation that he/she cannot accept an interest rate increase, the impossibility for the credit institution to unilaterally terminate or rescind the agreement without making a written proposal for the rescheduling or refinancing of the credit according to the consumer's income, to the extent that such procedures are permitted under the credit institution's internal norms;
- the communication of the pre-contractual information to the consumers shall be via a standard form, which is attached as appendix to the Ordinance 50/2010;
- the obligation for the credit institutions to notify the applicant in writing, within 30 days after the credit file has been submitted, but not later than 60 days after the credit application has been filed, whether it grants the credit requested;
- the removal of the fee for the analysis of the credit file when a decision to reject the credit application is taken by the credit institution.

Capital Markets

Regulation of special administration of the entities authorized by the National Securities Commission

Order no. 24/2010 for the approval of the Regulation no. 11/2010 regarding the special administration of the entities authorized by the National Securities Commission (the "**NSC**") was published in the Official Gazette, Part I, no. 288 of May 3, 2010. This Order no. 24/2010 came into force on the date of publication.

The Regulation no. 11/2010 sets forth certain provisions regarding the special administration of the entities authorized by the NSC, established by the later according to the Capital Markets Law. Under the said regulation, the special administration shall be conducted by a specialized individual or legal entity, which shall cumulatively comply with the following requirements: (i) holds the capacity as insolvency practitioner, (ii) is registered with the NSC Public Registry and (iii) is not involved in any conflict of interest with the entity which is subject to the special administration.

The special administrator takes the prerogatives of the board of directors of the respective entity and in this respect it may take all necessary steps to preserve the assets and to collect the receivables in the interest of the investors and of other creditors.

According to Regulation no. 11/2010, within 30 days after his appointment, the special administrator shall prepare and submit to the NSC a detailed report concerning the status of the entity under their management.

Also, within 60 days after his appointment, the special administrator shall prepare and submit to the NSC a detailed report regarding, among others, his findings concerning the possibility or impossibility to straighten out the financial situation of the entity in question. Following the receipt of this report, the NSC shall decide upon either (i) the extension of the special administration, (ii) the replacement of special administration or (iii) the cessation of the special administration.

Energy/ Projects

The government approved a legal framework for initiating and developing green investment schemes

Government Decision no. 432/2010 regarding the initiation and development of green investment schemes, published in the Official Gazette no. 303 of 10 May 2010.

The scope of this normative deed is to exploit efficiently the surplus of units of the quantity assigned by Kyoto Protocol, the AAU units (unit of the assigned quantity), as determined by the Kyoto Protocol.

In this context, Romania can exploit in 2010 an approximate quantity of 300 million AAU, packed in 1 million tons packages.

Under the new decision, the amounts of money resulting from the capitalization of the available carbon dioxide emissions shall be used for environmental investments and for greenfield projects, thereby transposing the provisions of Kyoto Protocol.

The sectors that will benefit from the amounts obtained from selling the surplus of units of the quantity assigned by Kyoto Protocol are: clean technologies, including cogeneration of high efficiency, modernization and rehabilitation of power units, increase of energy production from renewable sources, improvement of the efficient use of energy in the buildings, reducing greenhouse gases in agriculture and transport by encouraging the use of electric and hybrid vehicles, waste management with the reduction of emissions of greenhouse gases, land forestation.

The money obtained from the development of the available emissions of carbon dioxide will be managed by the Environmental Fund.

Antitrust and Competition

European Commission adopts revised competition rules for motor vehicle distribution and repair

Commission regulation (EU) no. 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector.

On the 27th of May, the European Commission has adopted new completion rules applicable to agreements between vehicle manufacturers and their authorized dealers, repairers and spare parts distributors. The new rules aim at improving the access to technical information needed for the repairs and making it easier to use alternative spare parts.

The new rules are meant to be in line with the general framework given by the vertical restraints block exemption regulation no. 330/2010 adopted on 20 April, by introducing the 30% market share threshold above which the agreements will no longer be block exempted.

As a consequence of the new rules being adopted, the car manufacturers will no longer be able to impose that the warranty is conditional on having the oil change or other services only in authorized garages.

Also, the distribution of cars will also suffer some changes, as the new rules will allow carmakers to have more flexibility to organize diverse networks in which multi-brand dealers will co-exist alongside single brand dealers.

The new rules came into force on 1 June 2010, concerning the repair and maintenance markets, and on 1 June 2013 with regard to the vehicle sales markets and will be valid until 31 May 2023.

Compliance

Mandatory registration procedures for intra-Community operations

Emergency Government Ordinance no. 54/2010 on certain measures to address tax evasion was published in the Official Monitor on June 23, 2010.

It requires, *inter alia*, that all taxable persons, as well as non taxable legal entities which carry out intra-Community operations in Romania (meaning acquisitions and delivery of goods or services in from or to the European Community) must be registered in the Registry of Intra-Community Operators (the "Registry") in order to be able to perform such intra-Community operations as of August 1, 2010.

After August 1, 2010 no intra-Community operations may be carried out in the absence of registration in the Registry and it will not be possible for companies to use their VAT code for intra-Community operations. Performing intra-Community operations after August 1st, 2010 in the absence of registration in the Registry is sanctioned as a misdemeanor with a fine ranging between 1,000 RON and 5,000 RON.

Registration in the Registry takes 10 calendar days to complete, as from submission of the application. The application must be accompanied by certain justifying documentation, which includes the criminal records of shareholders (except for joint stock companies) and directors of the applicant. This procedure proves especially cumbersome and time consuming where the shareholders and/or directors are non-resident entities/individuals, in which case the criminal records for such non-resident shareholders/directors can be obtained from the General Police Inspectorate of Romania, on the basis of a power of attorney which must be notarized and apostilled.

The procedure for the organization and operation of the Registry of Intra-Community Operators has been approved though Order no. 2101/2010 issued by National Agency for Tax Administration, published in Official Gazette, Part I, no. 429 dated 25 June 2010.

Employment and Social Security Law

New qualifications for 'dependent activities' – tax consequences

In an attempt to curb the widespread practice of disguising what are, in effect, employment relations through the use of other categories of contracts (e.g. copyright contracts, consultancy contracts, even in an 'authorized self-employed individual' format), the Government passed Emergency Government Ordinance no. 58/2010 amending the Fiscal Code ("**EGO 58/2010**").

Among other provisions, EGO 58/2010 gives a new qualification to revenues deriving from dependent activities (which are subject to the same tax regime as salary revenues obtained on the basis of employment relations), thus extending the scope of application to those other categories of contracts pursuant to which natural persons obtain revenues based on a subordinated relationship with the beneficiary.

As such, EGO 58/2010 provides that individuals obtaining revenues from independent activities (including, therefore, the category of 'authorized self-employed individuals') shall pay similar social contribution as those payable in relation to salary revenues, to the extent the activity may be qualified as a 'dependent activity'. EGO 58/2010 provides that any activity may be qualified as a 'dependent activity' if it meets at least one of the criteria below:

- the receiver of the revenue is in a subordinated relationship vis-à-vis the revenue payer or its management bodies and observes the labor conditions imposed by the latter such as tasks and duties and the manner of fulfillment thereof, schedule of performance of the activity, working time;
- in the performance of the activity the receiver of the revenue uses the material resources of the revenue payer, including premises with the respective endowments, specific working or protection equipment, work tools and similar;
- the receiver of the revenue contributes only with its physical or intellectual abilities, and not with own capital;
- the revenue payer bears, in the interest of the respective activity, any travel costs of the receiver of the revenue, such as daily allowance, reimbursement of travel and accommodation costs and similar expenses;

- the revenue payer bears any compensation for annual leave or temporary work incapacity, on account of the receiver of the revenue;
- any other element that reflects the dependent nature of the activity.

The consequences of a re-qualification of an activity as being a 'dependent activity' within the meaning described above is that the legal rules applicable to determining income tax and mandatory social contributions in respect of salary revenues shall become applicable in respect of revenues obtained from such 'dependent activity, up to the equivalent of 5 gross average salary in the economy.

More importantly, in such cases, the beneficiary of the revenue and the revenue payer shall be held jointly and severally liable for the payment of all taxes and contributions levied as per the paragraph above.

Finally, EGO 58/2010 further enlarges the categories of taxable income, by including in the category of 'salary income' the following:

- the value of any lunch tickets granted by the employer in accordance with the law;
- the value of day care tickets granted by the employer in accordance with the law;
- the value of holiday tickets granted by the employer in accordance with the law;
- the value of gift tickets granted by the employer in accordance with the law;
- the value of severance payments granted by the employer to its employees upon the dismissal thereof for economic reasons.

Environment

Guide for funding the Program for the installation of heating systems using renewable energy

Order no. 950/2010 approving the Guide for funding the Program for the installation of heating systems using renewable energy, including replacement or supplement conventional heating systems.

The new Order approves the Guide funding Program on installation of heating systems using renewable energy, including replacement or supplement conventional heating systems. The guide contains provisions on: program, applicant's eligibility, to file financing the proposed project and related costs; conditions for submission of the file of financing, analysis and selection, approval, financing, implementation and monitoring of the proposed project. For any details regarding the amendments and the supplementations brought in this respect, please refer to the provisions of the Order no. 950/2010.

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