LINA & GUIA
ATTORNEYS AT LAW

Legal update by reference
to the months of **July** and **August 2011**

Legal Brief
Lina & Guia SCA

Banking & Finance

A new legal framework for the legal interest

Government Emergency Ordinance no. 13/2011 (the „**Ordinance**") on the penalty and remunerative legal interest for monetary obligations and regarding certain financial and fiscal measures in the banking sector was published in the Official Gazette Section I no. 607, dated August 29, 2011.

As to the former regulation on legal interest (Government Ordinance no. 9/2000), the Ordinance brings numerous amendments among which the most important are:

A) A clear distinction between the two types of interest applicable in relation to a payment obligation: (i) the remunerative legal interest – interest computed before the maturity of the payment obligation and (ii) the penalty legal interest - interest computed after maturity, as sanction for failure to fulfil payment obligations (collectively „**Legal Interest**");

B) The Legal Interest is applicable: (i) in the case of any obligation that is interest bearing, under the law or under the contractual provisions, as well as (ii) in the case where the parties have not determined the interest rate;

C) The remunerative legal interest rate is equal to the benchmark interest rate of the National Bank of Romania („**NBR**"), which shall be published in the Romanian Official Gazette, Section I, whenever the monetary policy interest rate is amended by the NBR;

D) The penalty legal interest rate shall be equal to NBR's benchmark interest rate, to which four per cent shall be added;

E) The interest will be calculated only on the borrowed amount, however accrued interests may be capitalized and may bear interests, in their turn, under a special convention, concluded in this respect, after the maturity of such accrued interests, but only for interests due for at least one year;

F) By way of exception, remunerative legal interests can be capitalized and may bear interests, in their turn.

The Ordinance also brings amendments to certain important regulations regarding:

A) Capital Markets – Law 253/2004 on settlement finality in payment and securities settlement systems;

B) Financial Guarantees – Government Ordinance 9/2004 regarding certain financial guarantee contracts;

C) Banking Institutions – Emergency Government Ordinance 99/2006 regarding credit institutions and capital adequacy, Government Ordinance 39/1996 regarding the set-up and operation of the bank deposit guarantee fund and Government Ordinance 10/2004 regarding the bankruptcy of credit institutions.

Lina & Guia
ATTORNEYS AT LAW

Real Estate

The expropriation for public utility

Law no. 33/1994 regarding the expropriation for public utility has been republished and amended under the provisions of Law no. 71/2011 regarding the application of Law no. 287/2009 of the Civil Code (published in the Official Gazette no. 472/5.07.2011)

We refer, *inter alia,* to the following amendments:

- In case the expropriated immovable assets were not used within one year in accordance with the designated purpose of the expropriation or, where appropriate, the works related to the immovable were not initiated, the former real estate owners are entitled to request the restitution of such immovable assets, provided that a new statement of public utility has not been issued.

- The restitution claims are to be filled before the Tribunal Court within the general statute of limitation period.

- In case the works related to the expropriated immovable assets are not performed and the expropriator intends to transfer/assign the immovable assets, the former owner has a preference right for purchasing such assets, at a price not higher than the updated amount compensation. In this respect, the former owner shall be notified by the expropriator. If the former owner does not decide to purchase the immovable assets within two months from the notification date, the expropriator may freely assign/transfer the immovable assets. If the preference right is not duly observed, the former owner may purchase the immovable assets from any third party to which the ownership right has been transferred, by paying the purchase price and any other additional expenses related to the transaction.

The computation and payment of the tax for land improvement services

Order no. 120/2011 approving the methodological norm regarding the computation and payment of the tax for land improvement services (published in the Official Gazette no. 542/01.08.2011)

Such norm contains provisions regarding the structure of the irrigation water supply tax and the annual tax, its periodical adjustment procedure, the ways to inform the beneficiaries about its amount, the term for executing the multiannual agreements and the payment' due date.

In this respect, it is stated that the tax for land improvement services shall be established in order to ensure a reasonable exploitation of the land improvement infrastructure, the irrigation systems and the mechanisms against floods and soil erosion in order to prevent the inefficient water usage, humidity excess, soil pollution and to promote the environment protection.

The increase of the architectural and ambient quality of the buildings

Law no. 153/2011 regarding the measures for increasing the architectural and ambient quality of the buildings (published in the Official Gazette no. 493/11.07.2011).

Under the provisions of the above mentioned law, the owners of damaged buildings which endanger the life, health and physical integrity and safety of the population are required to initiate structural and architectonical rehabilitation projects.

In this respect, the public authorities shall issue, organize, supervise and control the implementation of the multiannual projects for increasing the architectural and ambient quality of such buildings.

entirely paid by the building owners, except for those who prove that their net monthly income is smaller than the monthly medium net salary in Romania. Also, the municipalities shall contribute financially for the rehabilitation of the buildings situated within protected areas, the historical centres of the villages and the touristic resorts.

Failure to observe the obligations under such law, entitle the authorities to require penalties amounting from 2.000 RON up to 15.000 RON.

Competition & Antitrust

Important modifications to the Competition Law

Law no. 149/2011 approving the Government Emergency Ordinance no. 75/2010 regarding the amendment of Law no. 21/1996 (published in the Official Gazette no. 490 of 11 July 2011)

The Romanian competition law has been significantly amended as a result of the coming into force of Law no. 149/2011. The most relevant amendments refer to the reduction of the tax for merger clearance, the reduction of the bail required to be paid by a fined undertaking when asking suspension of a Competition Council's decision imposing a fine, the assumption of dominance in the cases when the market share of an undertaking exceeds 40%.

1. The presumption of dominance of an undertaking with a market share of over 40%.

According to the amended form of Law no. 21/1996, undertakings that have a market share of over 40% on the relevant market shall be presumed to be dominant on the said market, until proven otherwise. This amendment is relevant due to the fact that, under these circumstances, the Competition Council benefits from the presumption that an undertaking holding a market share of over 40% is dominant on that market, being the undertaking's task to overturn the presumption should it hold, for example, a market share of 41%. This modification is contrary to the European provisions, according to which a market share of less than 40% is a presumption of lack of dominance.

2. The reduction of the merger clearance tax

Prior to the recent amendments, the authorization tax was set at 0.04% of the total turnover in Romania of the undertakings involved in the merger, without exceeding the equivalent of 100,000 EUR. Law no. 149/2011 provides that the clearance tax will be set between 10,000 and 25,000 EUR (in RON equivalent). The Competition Council's regulation detailing calculation of this tax is also presented below in the current Legal Brief.

3. The regime of information collected by the Competition Council inspectors

Information collected by the Competition Council's inspectors will be used for applying competition legislation, as opposed to the previous form of Law no. 21/1996, under which such information could only be used for the purpose it was obtained. The Competition Council will also be able to notify other authorities whenever it identifies facts that fall under the jurisdiction of those particular authorities.

4. The reduction of bail charged for the suspension of Competition Council's decisions

The Competition Council's decisions imposing a fine may be suspended by the Bucharest Court of Appeal only subject to the payment of a bail of up to 20% of the imposed fine, in accordance with the Fiscal Procedure Code. Previously, the bail was a flat percent of 30% of the imposed fine, without possibility of variation. This provision aims to speed up judgment of the cases which have as object the appeal against the sanctions imposed by the Competition Council.

5. The reduction of the sanction for the recognition of the infringement after receiving the report of investigation

The new amendments provide for an increase from 25% to 30% of the maximum percent with which the sanction can be reduced if the involved undertakings (after the receipt of the investigation report, during the observations or hearings) admit they infringed the law.

At the same time, in order to benefit from the reduction mentioned above, the investigated undertakings have the obligation to propose, as case may be, remedies for the elimination of the causes of infringement.

6. Hearing procedure

Prior to amendment of law, the investigation reports were compulsorily followed by hearing of the investigated parties, the sanctioning decision being taken only after the hearing. Since coming into force of the amendments, after the receipt of investigation reports and simultaneously with the submission of written observations, the undertakings will have *the right* to request the hearings. However, the law does not regulate under what circumstances the Council can approve or reject such requests.

7. Other provisions

The Law no. 149/2011 has also brought several other amendments, such as establishing a Consultative Board of the Competition Council that issues non-binding consultative advices regarding competition law related problems, and extending the Competition Council's authority to sanctioning unfair competition (by taking over certain attributions of the Competition Office within the Ministry of Public Finance according to Law no. 11/1991 and also using all the means available under Law no. 21/1996). For the newly created undertakings, that did not register a turnover in the previous financial year, the minimum and maximum fines applicable have been reduced to half (50%), thus the maximum amount of the fine cannot exceed RON 2.5 million.

The amendments brought to Law no. 21/1996 are in force starting with the third day from the publication of Law no. 149/2011 in the Official Gazette, with the exception of several measures regarding the Competition Council's organization, which will come into force one year after the publication of the modifying law.

New instructions regarding the merger clearance tax

Order no. 624 of 27 July 2011 enforcing the Instructions for amending and completing the Instructions applying article 32 of Law no. 21/1996 regarding the calculation of merger clearance tax (published in the Official Gazette no. 559 of 5 August 2011)

Before the modification, the merger clearance tax was determined by applying a percent of 0.04% to the total turnover of the undertakings involved in the economic concentration (including the acquiring undertaking). The new instructions provide, as a general rule, that only the turnover of the acquired undertaking (the target) will be taken into consideration. For the newly created undertakings, remains in force the rule of applying the tax to the turnover of the acquiring entity.

Under the modified instructions, the merger clearance tax will be determined on tranches depending upon the value of the turnover. The minimum value of the merger clearance tax is the equivalent of EUR 10,000 (if the relevant turnover is between EUR 4-15 million), while the maximum value of the tax has been set at the equivalent of EUR 25,000 (if the relevant turnover exceeds EUR 250 million).

The note regarding the relevant turnover will have to be submitted to the Competition Council either together with the merger notification form, or within 3 days from communication of the fact that the merger notification became effective.

Environment Government Decision no. 661/2011 for the establishing of measures to ensure national implementation of the EC Regulation no. 66/2010 of the European Parliament of 25 November 2009 on the EU Ecolabel

Government Decision 661/2011 was published in the Official Gazette, Part I no. 477 of July 6, 2011.

According to the decision, the Ministry of Environment and Forests is designated as the competent authority for granting the EU Ecolabel.

The evaluation of the file for granting the Ecolabel is performed by the Ecolabel Committee - an advisory body without legal personality.

The economic operators shall submit the request for granting the Ecolabel to the competent authority. Each application for granting the Ecolabel is subject to payment of a fee of 200 EURO representing the fee for processing the request.

According to the Government Decision, the following deeds represent contraventions:

1) Introducing products on the market with an Ecolabel if such a label was not granted according to the law;

2) The refusal of the economic operator to present the agreement on the general conditions of use of the Ecolabel at the request of the competent authority;

3) Presentation by the economic operator of inaccurate data on the result of the evaluation process of the product performance;

4) The placement on the Ecolabel of other mentions than those indicated in the EU Regulation.

Sanctions for deeds mentioned at point a-d above are from 5.000 up to 10.000 RON.

Restrictions on trading of the green certificates for the Romanian state

The Compliance Committee of the Kyoto Protocol issued a decision that has temporarily suspended the eligibility of Romania to participate to the mechanisms of Article 6, 12 and 17 of the Kyoto Protocol.

The suspension does not mean that Romania lost the 300 million assigned amount units (AAU), but the latter cannot be traded. The Romanian state goes forward with the negotiation of the contracts, so after the regaining of the eligibility the AAU transfers can be made. The authorities try to find a solution for reporting the certifi-

-cates for 2012.

The suspension took effect on the date of the communication of the decision by the Compliance Committee of the Kyoto Protocol.
The Ministry of Environment and Forests highlights that Romania will be affected by the application of Article 6 of the Kyoto Protocol – Joint Implementation Projects and emission reduction units (ERU) and Article 17 on the trading of AAUs. Following the suspension of eligibility on the two articles of the Protocol, Romania cannot make any transactions temporarily under the International Transaction Registry (ITR). This means that greenhouse certificates are also suspended from transaction.

Following the suspension under Article 6, Romania will continue the evaluation, approval and development of Joint Implementation Projects, but ERUs cannot be transferred to foreign partners of the project in their own accounts during the suspension period.
Romania will not be able to trade the excess of AAUs that remain in the Romanian state's ownership and will be traded after regaining the eligibility, since Romania will respect during this period its commitment to reduce emissions of greenhouse gas under the Kyoto Protocol.

IP/IT/Data Protection

A new submission procedure of the general registry of employees

Order no. 1918/2011 for the approval of the procedure and documents that must be presented by the employers to the territorial labor inspectorate for obtaining the password and also concerning the procedure regarding the submission of the general registry of employees in electronic format (hereinafter referred to as the "**Order**"), published in the Official Gazette no 587 19 August 2011.

The general registry of employees must include all the individual labor agreements in course at the date of entering into force of the provisions of Government Decision no 500/2011, meaning 01 August 2011, even if they are suspended at that time. The register will be completed with the individual labor agreements in the order of their conclusion, modification, suspension or termination.
The filling in of the registry must be made by:

- the employer;
- one or more persons appointed through a written resolution given by the employer;
- through service agreements contracted by the employer with service providers registered with the territorial labor inspectorate

using the computer application distributed free by the Labor Inspectorate or using their own information application.

The employers have three ways of submitting the register:

on-line submission through the Labor Inspectorate portal;

- e-mail submission including the electronic signature;
- submission at the headquarters of the territorial labor inspectorate.

LINA & GUIA
ATTORNEYS AT LAW

Contact Information

Lina & Guia SCA

Victoria Center, 9th floor
145 Calea Victoriei, 010072 Bucharest 1

Phone: +40 21 311 2561
Fax: +40 21 311 2562
E-mail: **office@lina-guia.ro**
Web: **www.lina-guia.ro**

Mihai Guia
Managing Partner
Mihai.Guia@lina-guia.ro

Cristian Lina
Managing Partner
Cristian.Lina@lina-guia.ro

Adrian Iordache
Partner
Adrian.Iordache@lina-guia.ro

Cristian Guia
Partner
Cristian.Guia@lina-guia.ro

*You will also be able to consult this Legal Brief, and our other newsletters, in the **News/Publications** section of our website.*