

# Tax & Legal Weekly Alert

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### **Significant changes brought to Law no. 50/1991 regarding the authorization for construction works**

The main amendments brought by Law no. 197/2016 approving the Government Emergency Ordinance no. 22/2014 for amending and supplementing Law no. 50/1991 regarding the authorization for construction works refers to the issuance of building permits, namely their content, the procedure for issuing an urbanism certificate and the abrogation of district mayors' approval.

### **Limitations on the marketing of breastmilk substitutes (and of similar products)**

As of May 11, 2017, both producers and distributors of breastmilk substitutes (and of similar products) can conduct marketing activities with regard to these products under strictly regulated conditions.

### **New Law on public-private partnership**

Law no.457/2016 on public-private partnership has been sent for promulgation on November 14, 2016.

### **New customs simplification – Submission of customs declaration prior to the presentation of goods to customs**

National Customs Directorate has announced that the RCDPS application has been upgraded with procedure codes allowing the submission of an import customs declaration prior to the presentation of goods to customs. This simplification will shorten the waiting time for customs release of goods.

### **Law proposal regarding the approval of the Government Ordinance no. 10/2016 regarding the modification and amendment of Law no. 422/2001 with regards to the protection of historical monuments.**

On 14 November 2016, the law proposal regarding the approval of the Government Ordinance no. 10/2016 ("PL O.G. 10/2016") regarding the modification and amendment of Law no. 422/2001 (the "Law") with regards to the protection of historical monuments was sent to the Romanian President for promulgation.

## **Legislative proposal for the completion of art. 456 of Law no. 227/2015 regarding the Fiscal Code**

On the 7<sup>th</sup> of November 2016 the legislative project regarding the completion of art. 456 regarding tax exemptions for buildings from Law no. 227/2015 regarding the Fiscal Code was sent to the permanent commissions of the Deputies Chamber.

## **New regulations regarding the administrations of harbors and waterways, the use of the naval transport infrastructure part of the public domain, as well as the naval transport activities in harbors and internal waterways**

On the 14<sup>th</sup> of November 2016 the legislative proposal to amend and complete the Government Ordinance no. 22/1999 regarding the administration of harbors, the use of naval transport infrastructure part of the public domain, as well as the naval transport activities in harbors and internal waterways was sent to the President of Romania to be promulgated.

## **Tax agreement between Hong Kong and Romania ratified by Romania**



## Significant changes brought to Law no. 50/1991 regarding the authorization for construction works

**Law no. 197/2016** approving the Government Emergency Ordinance no. 22/2014 for amending and supplementing **Law no. 50/1991** regarding the authorization for construction works was published in the Official Gazette no. 74 dated 1st of November 2016 and entered into force on 4th of November 2016.

### **Urbanism Certificate issuance. Amendments affecting the energetic sector and the infrastructure.**

Upon justified request, the urbanism certificates can now be issued in a maximum of 15 days, under an emergency regime. Additionally, according to the new provisions, the urbanism certificates will also contain information related to the urbanistic consequences of the sale-purchase operations. However, the law does not define the notion of urbanistic consequences and thus, most probably, a change of the standard format of the urbanism certificate will be necessary and a clarification regarding this issue should be contained in the Methodological Norms for the application of Law no. 50/1991.

Furthermore, the issuance of urbanism certificates is mandatory in case of unification or dismemberment procedures if at least three plots are included in such a procedure. Nonetheless, the urbanism certificate is optional when the unification or dismemberment procedure is the consequence of a severance operation, excepting the case when the scope of the request for such an operation is the performance of construction and/or infrastructure works.

The possibility of obtaining an urbanism certificate for land not registered with the land book is now expressly provided for.

The new provisions contain a description of the documentation necessary for the issuance of the urbanism certificate for the execution of certain construction works in the energetic sector, such as: construction works necessary for the exploitation/development of geological operations and the exploitation of oil and natural gas, namely works regarding the performance, development, modernization, retrofitting, rehabilitation and revision of the national systems/transportation networks of electric energy, natural gas, crude oil, gasoline, ethane and condensed. The same provisions apply to infrastructure works related to transport projects, relocation of utilities networks (distribution networks for electric energy, natural gas, water and canal) and national systems/transportation networks of electric energy, natural gas, crude oil, gasoline, ethane and condensed.

Thereby, apart from the lease contract or the convention between parties, the applier shall also present the proof of depositing the sums of money necessary for compensation and indemnity in advance.

### **Building permits**

The right of administration is expressly included in the category of in rem rights which entitle the obtainment of building/demolition permits.

An important clarification is made in relation to changing the destination of a construction. A building permit shall not be required for changing the destination of a construction, with the exception of the situation when construction works which would require a building permit must be performed for the changing of the destination.

For the building permits which fall under the competence of the General Mayor of Bucharest, the approval of district mayors is no longer required. In particular,

the building permit for infrastructure works for communications (including optical fiber) is expressly included under the General Mayor of Bucharest' competence.

### **Possibility of concluding a handover protocol for the partial reception of works**

In order to certify the physical stage of works, it is possible to conclude a handover protocol for partial reception. Moreover, it is possible to partially receive finished construction works performed based on different execution agreements, but only if they have as subject works authorized through the same construction/demolition authorization. Anyhow, the Law does not specify the way of concluding such a handover protocol, or its effects, since this new provisions are not yet correlated with those of Government Ordinance no. 273/1994 regarding the approval of Regulation for reception of construction works and the fixtures related to them.

### **The fine for certain infringements has increased**

For certain wrongdoings which constitute infringements according to Law 50/1991, the fine has increased from the amount of RON 3.000 – 10.000 to the amount of RON 50.000 – 100.000.

### **Historical monuments**

As regards the historical monuments, the Law no. 422/2001 regarding the protection of historical monuments is no longer referred to and the categories of historical monuments are described in detail, now including also the monuments, developments and sites.

Moreover, amongst the works performed to historical monuments or in the areas of protection of these monuments, the law also includes the works performed to constructions which have a unique architectural or historical value, as established through approved urbanism documentation.

### **Registration with land book**

The ownership right over a construction shall be registered with the land book on the base of an attestation certificate, and the concession right over the land shall be registered based on a document attesting the transfer of the ownership right over the construction.

[For further questions regarding the aspects mentioned in this alert, please contact us.](#)

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## New rules on the marketing of breastmilk substitutes, as well as related practices

Law No. 207/2016 introduces a number of restrictions on the marketing of breastmilk substitutes (and of similar products), targeting not only the producers and distributors of these products, but also the health system personnel.

### Targeted products

- breastmilk substitutes, produced for the feeding of the infants and young children up to 2 years;
- any liquid, semisolid or solid food to be administered to infants in the first 6 months of life, or fortifiers of breastmilk;
- bottles, pacifiers, special cups for infants, milking pumps or other similar tools; and
- any other similar products.

### Examples of imposed interdictions

- placement, advertising and any other form of promotion to the general public;
- preceding or accompanying discount sales by advertisements;
- conducting advertising activities and other promotion actions, both by direct sellers and on remote sale of products;
- conducting advertising or product placement activities by producers or distributors on points / structures of sale, and any promotion actions at the retail level, or other activities with regard to special offers, tying sales, prizes, gifts, promotional packages, special displays for sale, distribution of samples, or any other similar practices;
- use of discounts as well as any other policies or commercial practices aimed at establishing of the prices by producers or distributors, used as a mechanism for advertising or promotion;
- use of any component of the health system on gatherings or medical scientific events for the purpose of product placement, advertising or promotion of any kind;
- promising, offering or granting, directly or indirectly, of money or other benefits for himself or for others, to health system personnel, to promote or advertise these products;
- use of services provided by staff paid by producers or distributors for the purpose of promoting these products to pregnant women or mothers.

### Sanctions

Failure to observe the provisions of this law constitutes minor offence and is sanctioned with a fine amounting from RON 5,000 RON to RON 100,000 (in case of deeds committed by legal persons) or from RON 500 to RON 100,000 (in case of deeds committed by individuals). Authorized personnel of the Ministry of Health or the National Authority for Consumer Protection shall apply the contraventions and penalties (depending on the provision that has been infringed).

The provisions of Law No. 207/2016 will be applicable as of May 11, 2017.

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## Law no. 457/2016 on public-private partnership has been sent for promulgation on November 14, 2016

On November 14, 2016, the new law of public-private partnership, has been sent to the Romanian President for promulgation.

The law will enter in force in 30 days following publication in the Official Gazette and it aims to establish the legal framework for concluding and performing public – private partnerships.

Moreover, 90 days following its entry into force, secondary legislation will be developed by Government Decision.

Similar to Law no.178/2010 on public-private partnership, repealed by the Law no.100/2016 on works concessions and services concessions, the new law on public-private partnership states under article 1, that: public-private partnership consists in implementation, or where appropriate, rehabilitation and/or extension of an asset or assets designated to the provision of a public service and/or operation of a public service.

Implementing a project through public-private partnership will be achieved only when, following a background study, it is established that the income of the project company is generated, wholly or in majority, through payments made by the public partner or by others public entities for its benefit (article 2).

According to new legal framework, public-private partnership can embrace two forms:

- Contractual public-private partnership, being established on the basis of tripartite agreement concluded between the public partner, the private partner and the project company with 100% private share capital.
- Institutional public-private partnership, established on the basis of an agreement between the public partner and the private partner, through which a new company – project company shall be established, the latter becoming part of the partnership agreement.

Law no.457/2016 provides the possibility to conclude public-private partnerships regarding the performance of relevant activities in public utility sectors as regulated by Law no. 99/2016 regarding sectorial procurement, or regarding development, by a private operator, of public utility community services as regulated by Law no. 51/2006.

Public-private partnership projects shall be awarded in accordance with the provisions of Law no.98/2016 on public procurement, Law no.99/2016 on sectorial procurement, or where appropriate, Law no.100/2016 on works concessions and services concessions, according to the subject matter of the contract and the transferred operational risk of economical nature.

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## **New customs simplification – Submission of customs declaration prior to the presentation of goods to customs**

National Customs Directorate has announced, through a statement posted on its website, that, in order to facilitate and simplify customs formalities, The Romanian customs declaration processing system (or RCDPS) has been upgraded with procedure codes allowing the submission of customs declaration, especially for risk analysis purposes, prior to the presentation of goods to customs.

### **What does this mean for you?**

Companies performing import operations will benefit from shorter waiting time for customs release of goods by being able to submit a customs declaration, using the RCDPS application, prior to the presentation of goods to customs.

### **What do to?**

To benefit from this customs simplification, importers will need to obtain an authorization from the customs office, further on, the applicant operators will have to be registered in the customs it system.

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## **Law proposal regarding the approval of the Government Ordinance no. 10/2016 regarding the modification and amendment of Law no. 422/2001 with regards to the protection of historical monuments.**

### **Amendments regarding the granting of approvals**

First of all, the law proposal regarding the approval of the Government Ordinance no. 10/2016 extends the competence of the Ministry of Cults and Culture for granting intervention approvals. This extension covers interventions to all the immovable assets located in the protection area of historical monuments and in the constructed protected area, not only the immovable assets for which construction regulations approved in accordance to the law do not exist (art.1 PL O.G. 10/2016).

The proposal of the National Committee for Historical Monuments for the issuance of approvals provided for in art. 33 alin. 1 lit. h)-l) și de art. 34 alin. (5) lit. e)-h) of the Law is no longer mandatory for the Ministry of Culture. Thus, only the inclusion of the National Committee for Historical Monuments' proposal is now mandatory or, respectively, of the local committees for historical monuments. The Ministry of Culture and its deconcentrated services may, under justifiable reasons, request the reexamination of the proposals presented by the National Committee for Historical Monuments or by the local committees (art. 2 și 6 PL O.G. 10/2016). At least an architect, an archaeologist and a construction engineer have to be part of the local committees for historical monuments (art. 4 PL O.G. 10/2016).

Moreover, another exception is that the Ministry of Culture or its deconcentrated services can now issue approvals with regards to the technical documentations without first consulting the National Committee for Historical Monuments or, respectively, the local committees for historical monuments. This exception applies for the types of interventions to the historical monuments or to immovable assets located in their protection areas, which only affect to a reduced extent the historical substance of the properties and/or which are temporary and realized under certain conditions, when such types of interventions and conditions are identified by order of the Ministry of Culture (art. 7 PL O.G. 10/2016).

### **Amendments regarding certain minor offences**

The following actions shall constitute minor offences:

- execution of works to an immovable asset after the classification procedure over a historical monument has started, in its area of protection or in the areas protected, without the approval of the Ministry of Culture or of its deconcentrated services, as the case may be. Previously, this type of works were not considered a minor offence. Corroborating this provision with art. 24 (a) from Law 50/1991 regarding the authorizations of the construction works, the execution of works after the classification procedure has started until it is finalized will constitute a minor offence, while the execution of works after the classification procedure has ended will constitute a crime.
- granting a building permit or a demolition permit for works performed on historical monuments, in their area of protection or in protected areas, without the approval of the Ministry of Culture or of its deconcentrated services (art. 10 PL O.G. 10/2016). Previously, the provision describing this minor offence was unclear (as it only mentioned "historical monuments in protected areas").

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## Legislative proposal for the completion of Law no. 227/2015 regarding the Fiscal Code in relation with tax exemptions buildings owned by real estate developers

### The extension of the applicability of art. 456 from Law 227/2015 regarding the Fiscal Code

The legislative proposal ("LP") aims to extend the applicability of art. 456 from Law 227/2015 regarding the Fiscal Code, regarding tax exemptions for buildings to the new constructions built exclusively for their capitalization through sale or lease (art. 1 LP). The exemption will be effective between the date of the acceptance certificate, concluded at the finalization of the construction, and until the date of the capitalization of the construction either through sale or lease or from the date of the commencement of the use of the construction.

The LP receive a favorable permit from the Legislative Council of the Senate and was adopted by the Senate on the 1<sup>st</sup> of November 2016.

The Romanian Government formulated a point of view regarding the LP in which it criticizes it for several reasons. Firstly, the Government considers that the granting of such an exemption contradicts the principle included in art. 455 (1) of the Law 227/2015, "Any person who owns a building situated in Romania owes an annual tax for the said building." Secondly, the Government considers that the provision lacks predictability and clarity because it is not specified how it will be determined the specific purpose for which a construction was built as well as it is not clear what "the commencement of the use of the construction" means. Moreover, the PL will lead to the decrease of the local budgets and the initiator fails to propose alternatives which will cover the decrease, as it is provided in art. 15 (1) of Law 500/2002 regarding the public finances.

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## **New regulations regarding the administrations of harbors and waterways, the use of the naval transport infrastructure part of the public domain, as well as the naval transport activities in harbors and internal waterways**

The legislative proposal to amend and complete the Government Ordinance no. 12/1999 (“**GO 22/1999**”) regarding the administration of harbors and waterways, the use of the naval transport infrastructure part of the public domain, as well as the naval transport activities in harbors and internal waterways (“**LP GO 22/1999**”) brings a series of modifications to the legislation in place.

The main purpose of this legislative proposal is to increase the efficiency of the use of the harbor plots which are part of the public domain and to increase the standards of performance and professionalism of the management of the harbor administrations, which should grant increased attention to their essential obligations to repair and maintain the harbor infrastructure.

Consequently, the legislative proposal introduces a series of clarifications regarding the constitutive elements of the harbor infrastructure, as well as the obligations of the harbor administrations.

The legislative proposal was sent to the President of Romania for promulgation on the 14<sup>th</sup> of November 2016.

### **The extension of the applicability of the legislation and the redefinition of certain terms**

The legislative proposal provides that the application of the law will extend to the activities connected to naval transport (art. I.1 LP GO 22/1999). Also, the ships belonging to the Romanian Naval Authority and the Autonomous Administration “The Fluvial Administration of the Lower Danube” Galati are removed from the scope of application of the law (art. I.2 LP GO 22/1999).

The naval transport infrastructure is redefined to be composed of the Romanian navigable waters, the internal waterways infrastructure and the harbor infrastructure regardless of the form of property (art. I.5 LP GO 22/1999). The marine safety areas, the waterways safety areas and the approach channels towards the harbors are excluded from the definition of naval transport infrastructure. Moreover, the internal waterways infrastructure is defined to be composed of the internal Romanian waterways, flood gates, defenses and pavements of coasts or banks, technological roads along the waterways and, additionally to the previous form of GO 22/1999, the hidrotechnical plots and constructions, installations and the corresponding equipment (art. I.5 LP GO 22/1999).

LP GO 22/1999 redefined the constitutive elements of the harbor as being the harbor infrastructure and the harbor superstructure, which are defined as follows:

- Harbor infrastructure – harbor plots, hidrotechnical constructions destined to the dock of the ships and/or corresponding to the harbor, harbor basins inside the harbor, approach channels inside harbors, railways, technological roads, installations and equipment located inside the harbor and which are destined to provide utilities, port waters;
- Harbor superstructure – installations and equipment destined to maneuver the merchandise, buildings destined to the storage and processing of the merchandise, other buildings and special constructions, harbor platform, waste takeover installations and equipment, including the waste produced by the ships, traffic control systems in the harbor, as

well as any other goods which through their nature or destination serve any naval transport activity as provided in art. 19.

Another new element is represented by the fact that the harbors are not classified anymore according to the form of property of its infrastructure, but the form of property of the plots of land corresponding to the harbors (art. I.8 LP GO 22/1999)

LP GO 22/1999 introduces new definitions for "place of operations", "isolated place of operation", as well as "roadstead" and brings clarifications to the use of roads located inside the harbors and the technological roads (art. I.9 and I.11 LP GO 22/1999)

### **Amendments regarding the development of the harbor infrastructure**

LP GO 22/1999 proposes several amendments to the proceedings regarding the development of the harbors. In this sense, the development of the harbors which are part of the public domain of the state or administrative-territorial units will be effected only after the consultation of the harbor and/or internal waterways management and the entrepreneurs' and professionals' associations representatively and legally constituted.

Moreover, the investments in the immovable assets part of the harbor superstructure which lead to the amendment of the systematization of the harbor or increase the operational capacity of the harbor or can influence the technical state of the infrastructure, can be effected only with the assent of the ministry, regardless of the form of property of the plot. The aforementioned assent can be refused only for founded reasons. New investments, alteration and modernization works, and any other interventions to the internal waterways infrastructure, regardless of the form of property, will be approved by the ministry.

### **Amendments regarding the obligations and the activities of the harbor management**

The main amendment regard the new obligations of the harbor management:

- To preserve, repair, modernize, develop, and maintain the minimal technical characteristics of the harbor infrastructure as they were established in the projection plans or technical books of each element of infrastructure or groups of elements representing a functional unit;
- To preserve, repair, modernize, develop and maintain the minimal technical characteristics of any existing utilities network on the territory of the harbor, which are administered or owned by them;
- To ensure to the economic operators, at their request, the re-supply or distribution of utilities (art. I.26 LP GO 22/1999);
- To preserve the existing access roads to the harbor territories. In exceptional situations, with the accord of the ministry or the local authorities, the harbor management can participate in the maintenance of the railways which connect the harbor territories, national roads or high-ways;
- To participate in disaster intervention, including contaminations.

Additionally, harbors will be included in the list provided at art. 8 GO 22/1999 only after the endorsement of the harbor regulation by the directorate (art. I.26 LP GO 22/1999)

Furthermore, the internal waterways management have the obligation to preserve, repair, modernize, develop and maintain the respective naval transport infrastructure. The management will also fulfill the harbor authority position (art. I.28 and I.29 LP GO 22/1999).

## **Amendments regarding the concession/sub-concession contracts**

As far as the concession/sub-concession contracts are concerned, the harbor management cannot transfer the concession contracts (art. I.32 LP GO 22/1999). Moreover, the contracts will encompass the following obligations of the managers:

- The obligation to use over 50% of the income obtained from the administration and exploitation of the naval transport infrastructure which will become the object of the concession for the preservation, repairing, modernizing and development of the infrastructure;
- The obligation to keep the management accounting.

The royalties will be calculated according to the income obtained through providing access to the users to the infrastructure received in concession. Amongst the attribution of the concession/sub-concession criteria, the minimum volume of merchandise which needs to be operated annually will be replaced with the manner/level of fulfilment of the performance criteria provided in the tender book.

In the situation where in the winning bid/in the lease agreement the performance of certain investment programs was provided whose period of amortization exceeds the period of the concession contract provided at art. 30 (2), the successor in the rights of the management will be obliged to conclude with the sub-concessionaire/tenant of a sub-concession contract/lease agreement in the same conditions on a duration equal to the remaining period until the integral amortization of the investments.

The concession/sub-concession contracts will include termination clauses of the contract for the non-payment of the royalties due to causes imputable to the operator and the nonobservance of the execution graphic of the investment program, if the amendments of the graphic was not approved by the respective concessioning authority, and the causes of nonobservance of the graphic are imputable to the economic operator. Another new element is that the compensation method for the investments made on the concessioned/sub-concessioned naval transport infrastructure will be provided in the contract.

As far as the plots with harbor superstructure elements are concerned, the ones that are used legally by economic operators and for which there are not concluded any sub-concession or lease agreements at the moment of entry into force of LP EG 22/1999, the administrations and the users are required to conclude sub-concession or lease agreements for the harbor plots used for their activity. The duration of the contracts cannot exceed the duration of the concession agreement concluded between the ministry or the local administration authorities, as grantor, and the administrations, as concessionaires. The users have the obligation to express their option regarding the type of contract which they want to conclude within 90 days of the publishing of the framework sub-concession or lease agreement (art. II p. 2 (5) (6)). In case the economic operators refuse to conclude sub-concession or lease agreements, they can no longer use the harbor plots and the other elements of harbor infrastructure which are part of the public domain. The existing sub-concession/lease agreements concluded with the administrations regarding the superstructure owned by them will be terminated. The situation of the superstructure owned by the economic operators will be determined according to the law.

## **The establishment of the Supervision Council**

In order to ensure a high standard of competitiveness amongst the naval management, LP GO 22/1999 proposes the establishment of the Supervision Council, a department without legal personality of the Competition Council, which will have the following main attributions:

- Supervising the manner in which the harbor management provide access to the users to the naval transport infrastructure which is part of the public domain of the state of the administrative-territorial units;
- Approving the methods of substantiation, structure and level of tariffs for using the naval transport infrastructure, as well as the value of the rent/royalties for the lease/concession/sub-concession of the harbor plots which are part of the public domain of the state or the administrative-territorial units, charged by the harbor management, as well as monitoring their application in a non-discriminatory manner;
- Approving the methods of substantiation, structure and level of the tariffs charged for the accomplishment of the safety services, as well as the tariffs charged by the authorities which according to the law of establishment and functioning have a monopoly on the carried activity;
- Supervising the consultation amongst the harbor management and the economic operators/ entrepreneurs' and professionals' associations of representatives/union federation of representatives, as provided in the present ordinance;
- Pronouncing decisions on all claims formulated by any interested party which considers that they were subjected to inequitable, discriminatory or unfair treatment in any way through the decisions adopted by the harbor management (art. I.55 LP GO 22/1999);

Any decisions of the Supervision Council will be mandatory for all parties concerned and can be contested before the Bucharest Court of Appeal. The reports ascertaining contraventions can be contested before the București Sector 1 Local Court.

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## Tax agreement between Hong Kong and Romania ratified by Romania

On 4 November 2016, the Romanian President signed a law ratifying the Hong Kong - Romania Income Tax Agreement. The ratification law was published in the Official Gazette on 16 November 2016.

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