

# Legal Bulletin

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### Electronic Communications

Name of the enactment	Government Emergency Ordinance No. 60/2008 for the amendment and completion of Government Emergency Ordinance No. 79/2002 on the general framework regulating communications ("GEO 60/2008")
Publication	Official Gazette of Romania, Part I, No. 375/16.05.2008
Entry into force	16 May 2008
Connections with other enactments	Government Emergency Ordinance No. 79/2002 on the general regulatory framework of communications, approved with amendments and completions by Law 591/2002, as further amended and completed
Connections with the Community Law	Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC
Main provisions	<p>GEO 60/2008 amends GEO 79/2002 by establishing the competences of the National Authority Regulating the Communications and the Information Technology to monitor and supervise the observance by suppliers of electronic communication networks and services of the obligations provided by Community regulations.</p> <p>Thus, the National Authority Regulating the Communications and the Information Technology is competent to:</p> <ul style="list-style-type: none"><li>• settle the disputes between suppliers of electronic communication networks and services in respect of the obligations provided by the Community regulations;</li><li>• request information from the suppliers of electronic communication networks and services for the purpose of supervising the observance of the obligations provided by the Community regulations;</li><li>• perform control actions for verifying the observance of the obligations provided by Community regulations.</li></ul> <p>Also, the non-observance of the obligations provided by the Community regulations was qualified as misdemeanor, which is sanctioned after completing a prior notice procedure, similar in some respects to the one used in the case of the</p>

other violations of the local provisions in the field of electronic communications.

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## Insurance

Name of the enactment

Order No. 5/2008 of the president of the Insurance Supervision Commission for the application of the Norms on the authorization and supervision of reinsurances ("**Order 5/2008**")

Publication

Official Gazette of Romania, Part I, No. 351/07.05.2008

Entry into force

7 May 2008

Connections with other enactments

- Law No. 32/2000 on the insurance activity and supervision of insurances, as further amended and completed;
- Company Law No. 31/1990, republished, as further amended and completed ("**Law 31/1990**").

Main provisions

Order 5/2008 implements the norms for the authorization and supervision of reinsurers. These norms establish the following:

- the conditions and documents based on which the Insurance Supervision Commission grants to reinsurers the authorization to carry out the reinsurance activity (as well as the conditions under which such authorizations can be cancelled or withdrawn by the Insurance Supervision Commission) and the conditions that need to be met by the founders and significant persons of reinsurers, which conditions are additional and special as compared to the general conditions for authorization of companies provided by Law 31/1990;
- the computation methodology of the solvability margin available to reinsurers, the minimal solvability margin and the security fund;
- the technical reserves that need to be constituted by reinsurers, the assets admitted to be covered and the distribution of the assets admitted to cover the gross technical reserves, providing for the obligation to constitute such technical reserves at a level allowing reinsurers to perform all the obligations undertaken in the reinsurance agreements.

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## Fiscal Law

Name of the enactment	Order No. 1372/2008 of 6 May 2008 on organizing the records for VAT purposes, according to Article 156 of Law No. 571/2003 concerning the Fiscal Code (“ <b>Order 1372/2008</b> ”)
Publication	Official Gazette of Romania, Part I, No. 364/13.05.2008
Entry into force	13 May 2008
Connection with other enactments	Law No. 571/2003 of 22 December 2003 on Fiscal Code, published in the Official Gazette of Romania, Part I, No. 927/23.12.2003  Decision No. 44/2004 of 22 January 2004 approving the Methodological Norms for the application of Law No. 571/2003 on Fiscal Code, published in the Official Gazette of Romania, Part I, No. 112/06.02.2004
Main provisions	<p>Order 1372/2008 completes and clarifies the content of Article 156 of Fiscal Code, by establishing more clearly the persons who are under an obligation to keep correctly and completely the records for VAT purposes. The fiscal record of the tax is organized based on the specific journals and registers of all the economic operations performed by all registered taxable persons (as well as the unregistered ones) for VAT purposes. The purpose of organizing the fiscal records is to provide a systemized presentation of all the fiscal information required for identifying the operations recorded in supporting documents and registered in the books of account.</p> <p>Article 1 of the Order 1372/2008 establishes the categories of persons who have this obligation, i.e.:</p> <ul style="list-style-type: none"><li>• the taxable persons established in Romania, for the operations carried out as part of their business, for the operations in relation to which they have the obligation to pay the tax as well as for any operation which falls under the scope of the value added tax, regulated by Title of the Fiscal Code;</li><li>• the persons under an obligation to pay the tax for any operation or who are identified as persons registered for VAT purposes according to Title VI of the Fiscal Code, for the purpose of carrying out any operation, for the respective operations;</li><li>• the taxable persons and the non-taxable legal entities, for all the intra-Community acquisitions;</li></ul>

- the taxable persons and the non-taxable legal entities, for all the intra-Community acquisitions;
- in the case of a joint venture which does not constitute a taxable person, the records have to be kept by the shareholder that keeps the accounts of the revenues and expenses of the joint venture, for the legal operations performed by that joint venture.

The records will be kept by means of journals, registers and other documents for the same purpose, the form of which can be established by each separate taxable person, according to the specific activity. The collected tax and the deductible tax have to be clearly evidenced, but the forms proposed by the Ministry of Economy and Finances are only for reference purposes, not standard forms (four such forms are provided in appendix to the Order 1372/2008).

However, the documents kept by each person under an obligation according to Article 1 have to contain at least the elements provided for each of these under item 79 of the Methodological Norms issued in applying title VI of the Fiscal Code, approved by Government Decision No. 44/2004, i.e.:

- the total value, tax free, of all the deliveries of assets and/or provisions of services performed by such person during each fiscal period, distinctly evidenced for: (i) the intra-Community deliveries of exempted assets; (ii) tax-free deliveries/provisions or for which the place of delivery/provision is outside Romania; (iii) the taxable deliveries of assets and/or provisions of services to which different tax quotas are applied;
- the total value, tax-free, of all the acquisitions for each fiscal period, distinctly evidenced for: (i) intra-Community acquisitions of assets; (ii) acquisitions of assets/services for which the taxable person is under an obligation to pay the tax pursuant to Article 150 para. (1) letters b)-g) of the Fiscal Code; (iii) acquisitions of assets, including imported, and of services, which are taxable, to which different tax quotas apply;
- the tax collected by the relevant person for each fiscal period;
- the total deductible tax and the tax deducted for each fiscal period;
- the calculation of the tax provisionally deducted for each fiscal period, of the tax actually deducted for each calendar year and of the adjustments performed, when the right of deduction is exercised pro-

rata, evidencing distinctly: (i) the tax deducted according to Article 147 para. (3) of the Fiscal Code; (ii) the tax not deducted according to Article 147 para. (4) of the Fiscal Code; (iii) the tax deducted pro-rata according to Article 147 para. (5) of the Fiscal Code.

According to Article 2 of the Order 1372/2008, the documents requested can be drawn up manually (stored in Romania) or electronically, and can be stored wherever if the storage guarantees the on-line access to the data and the integrity of the content of the documents which they contain. Also, in the case of storage by electronic means, such documents have to be made available to the competent fiscal bodies without delay, whenever requested.

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## Forced Enforcement

Name of the enactment Order No. 1357/2008 of the Minister of Justice establishing a procedure for checking the authenticity of the writs of execution provided by Government Decision No. 1265/2007 on the appointment of the Ministry of Justice as the national authority competent for checking the authenticity of the writs of execution issued by the European Commission or by the European Council to be executed in Romania (“**Order 1357/2008**”)

Publication Official Gazette of Romania, Part I, No. 396/27.05.2008

Entry into force 27 May 2008

Main provisions Order 1357/2008 establishes the procedure for verifying the authenticity of the writs of execution issued by the European Commission or by the European Council to be executed in Romania, and its focus is to establish payment obligations for an individual or for a legal entity other than the Romanian state (the “**Writs of Execution**”), pursuant to which the issuance of authenticity certificates concerning such Writs of Execution is approved or refused.

Order 1357/2008 appoints the Department of European Affairs of the Ministry of Justice to fulfill the prerogatives of checking the authenticity of the Writs of Execution, it sets forth the conditions that need to be complied with by the Writs of Execution for which the drawing up of the authenticity certificate is requested, the procedural formalities for the issuance/refusal to issue the authenticity certificates and the manners of keeping the record of the processed Writs of Execution.

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## Real Estate

Name of the enactment	Law No. 101/2008 for the amendment and completion of Law No. 50/1991 on authorizing the performance of building works (“ <b>Law 101/2008</b> ”)
Publication	Official Gazette of Romania, Part I, No. 371/15.05.2008
Entry into force	18 May 2008
Main provisions	<p>The main novelties brought by this enactment refer to buildings representing appurtenances to agricultural exploitations, as follows:</p> <ul style="list-style-type: none"><li>• according to Law 101/2008, commune mayors will no longer issue building permits for appurtenances to agricultural exploitations of up to 100 m<sup>2</sup> of the <i>extra muros</i> area of communes;</li><li>• Law 101/2002 provides that commune mayors will issue building permits for the <i>extra muros</i> area of communes for buildings representing household appurtenances to agricultural exploitations with an overall built-up area of at most 5,000 m<sup>2</sup>;</li><li>• Law 101/2008 provides for a shorter term, of 15 days, for the issuance of building permits for buildings representing household appurtenances to agricultural exploitations;</li><li>• Law 101/2008 provides for the need to obtain the endorsement of the county or Bucharest department of culture and rural development, in areas adjacent to the buildings that represent household appurtenances to agricultural exploitations, as set out in urban plans in observance of the distances provided by the sanitary norms in force, establishing a restriction regime concerning the location of dwelling buildings and of socio-economic elements.</li></ul>
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This material is for reference only. It does not seek to provide final legal Advice, which may be requested according to each specific legal issue.

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