| MASURI PENTRU ACCELERAREA SOLUTIONARII PROCESELOR | MEASURES FOR THE SPEEDING-UP THE PROCEDURE BEFORE THE COURTS OF LAW |
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| In Monitorul Oficial, Partea I nr. 714 din 26/10/2010 a fost publicata Legea nr. 202 din 25/10/2010 privind unele masuri pentru accelerarea solutionarii proceselor, prin care se aduc amendamente semnificative unor importante acte normative in vigoare, precum: Codul de procedura civila, Legea contenciosului administrativ, Legea privind societatile comerciale, Legea privind taxele judiciare de timbru. | Within the Official Gazette, Part I no. 714 dated 26/10/2010 there was published Law no. 202 as of 25/10/2010 on steps for the speeding-up the procedure before the courts of law, through which there are brought major amendments to several normative acts in force, as follows: the Civil Procedure Code, the Disputed Claims Office Law, the Companies' Law and, the judicial stamp tax Law. |
| In continuare vom prezenta principalele modificari aduse de Legea 202/2010 actelor normative mai sus mentionate. | Hereinafter we shall present the main amendments brought by Law 202/2010 to the above mentioned normative acts. |
| **1) <u>Amendamente aduse Codului de procedura civila</u>** | **1) <u>Amendments brought to the Civil Procedure Code</u>** |
| **A) <u>Competenta instantelor judecatoresti</u>** | **A) <u>Courts of law competence</u>** |
| Ca urmare a noii reglementari, competenta de a judeca in prima si ultima instanta procesele si cererile avand ca obiect plata unei sume de bani de pana la 2000 lei inclusiv, revine judecatoriei. Hotararile pronuntate in cererile mentionate nu sunt supuse recursului. | Pursuant to the new regulations, the lower courts of law are competent to judge in first and last instance the trials and claims having as object the payment of an amount up to 2000 RON inclusively. The resolutions pronounced in such requests are not subject to recourse. |
| Legea 202/2010 reglementeaza, pe langa necompetenta de ordine publica (prevazuta si in vechea reglementare) si necompetenta de ordine privata. Astfel, in toate cazurile in care necompetenta nu este de ordine publica, respectiv i) in cazul incalcarii competentei generale; ii) in cazul incalcarii competentei materiale si iii) in cazul incalcarii competentei | Law 202/2010 regulates, apart from the incompetence of public order (also stipulated in the previous regulation), the incompetence of private order. Therefore, in all cases in which the incompetence is not of public order, respectively i) in case of breaching the general competence; ii) in case of breaching the material competence; iii) in case of breaching the |

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| teritoriale exclusive, necompetenta este de ordine privata si poate fi invocata doar de catre parat prin intampinare sau, cand intampinarea nu este obligatorie, cel mai tarziu la prima zi de infatisare. In ceea ce priveste necompetenta generala a instantelor judecatoresti, aceasta poate fi invocata atat de catre parti cat si de catre judecator in orice stare a pricinii. Necompetenta materiala si cea teritoriala de ordine publica poate fi invocata de catre parti ori de catre judecator la prima zi de infatisare in fata primei instante, dar nu mai tarziu de inceperea dezbaterilor asupra fondului. De asemenea, la prima zi de infatisare, judecatorul este obligat sa verifice si sa stabileasca, din oficiu, daca instanta sesizata este competenta general, material si teritorial sa judece pricina. | exclusive territorial competence, the competence is of private order and shall be invoked only by the respondent through contestation or, when the contestation is not mandatory, no later than the first day of hearing. Related to the courts of law general incompetence it can be invoked both by the parties and the judge in any stage of the cause. The material and territorial incompetence of public order shall be invoked by the parties or by the judge at the first day of hearing, but no later than the beginning of the debates on the grounds. Moreover, at the first day of hearing, the judge is obliged to check and establish, ex officio, whether the notified court of law is general, material and territorial competent to judge the cause. |
| Spre deosebire de vechea reglementare, care prevedea posibilitatatea atacarii cu recurs a hotararii prin care instanta se declara necompetenta, conform noii reglementari, hotararea nu mai este supusa niciunei cai de atac, dosarul fiind trimis de indata instantei competente sau, dupa caz, altui organ cu activitate jurisdictionala competent. | Unlike the previous regulation in which was stipulated that the resolution through which the court of law declared itself incompetent could have been subject to recourse, according to the new regulation the resolution is no longer subject to appeal, the file being immediately sent to the competent court of law or, as the case may be, to other competent bodies with jurisdictional activity. |
| **B) <u>Actele de procedura</u>** | **B) <u>Procedural deeds</u>** |
| Cererile adresate instantelor judecatoresti vor trebui sa cuprinda atat numele si prenumele, domiciliul sau resedinta reprezentantilor partilor, daca este cazul, cat si datele de identificare a mijloacelor de comunicare utilizate de parti, de reprezentantul avocat, precum si cele ale martorilor, atunci cand se cere dovada cu martori. | The request registered with the courts of law shall contain not only the first name and the middle name, the parties representatives' domicile or residence, if any, but also the identification data of the means of communication used by the parties, by an attorney-at-law, and also those of the witnesses, in case there is required the testimonial. |
| O noua dispozitie importanta a Legii 202/2010 prevede ca, dupa sesizarea instantei, daca partile au avocat sau consilier juridic, cererile, intampinarile sau alte acte se pot comunica direct intre acestia, cel care primeste actul avand obligatia de a atesta primirea si de a consemna | A new important provision of Law 202/2010 stipulates that, after notifying the court of law, if the parties are represented by an attorney-at-law or legal adviser, the requests, contestations or other deeds can be |

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| data primirii pe insusi exemplarul care se va depune la instanta, de indata, sub sanctiunea neluarii in seama. De asemenea, dovada comunicarii actelor poate fi facuta si prin orice alt inscris depus la dosarul cauzei prin care se atesta, sub semnatura, primirea fiecarui act de procedura care a fost comunicat. | directly communicated between them, the receiver being obliged to attest the receipt and to register the date of receipt on the copy which shall be immediately filed with the court, under the sanction of not taking into account. Moreover, the deeds' communication can also be proved by any other deed filed in the cause through which it is ascertained, under signature, the receipt of any communicated procedural act. |
| Conform noii reglementari, citatia va trebui sa cuprinda, pe langa mentiunile prevazute in reglementarea anterioara, si mentiunea ca, prin inmanarea citatiei, sub semnatura de primire, personal sau prin reprezentant, pentru un termen de judecata, cel citat este prezumat ca are in cunostinta si termenele de judecata ulterioare aceluia pentru care citatia i-a fost inmanata. | According to the new regulations, the summons shall also contain, apart from the mentions stipulated in the previous regulation, the mention that, by handing in the summons under receipt signature, personally or through representative, for a hearing, the cited person is presumed to have also knowledge about the hearings subsequent to that for which the summons was handed in. |
| Pe langa mentiunile reglementate anterior adoptarii Legii 202/2010, intampinarea va trebui sa cuprinda si numele si prenumele, domiciliul sau resedinta paratului ori, pentru persoanele juridice, denumirea si sediul lor, precum si, dupa caz, numarul de inmatriculare in registrul comertului sau de inscriere in registrul persoanelor juridice, codul fiscal, codul bancar si datele de identificare a mijloacelor de comunicare utilizate de catre parat. | Apart from the requirements to be included within the Law 202/2010, before the entry into force of the latter, the counterclaim shall also contain respondent's first name and middle name, his domicile or residence or, for legal entities, its denomination and headquarters, and also, as the case may be, its registration number with the trade registry or its matriculation number with the legal entities registry, its fiscal code, bank account and the identification data of the means of communication used by the respondent. |
| **C) <u>Executarea silita</u>** | **C) <u>Forced execution</u>** |
| In ceea ce priveste executarea hotararilor judecatoresti si a celorlalte titluri executorii, noua reglementare prevede ca aceasta poate fi realizata de catre executorul judecatoresc din circumscriptia curtii de apel (anterior, din circumscriptia judecatoriei) in care urmeaza sa se efectueze executarea ori, in cazul urmaririi bunurilor, de catre executorul judecatoresc din circumscriptia curtii de apel (anterior, din | Relative to the execution of court's resolutions and of other writs of execution, the new regulations stipulate that it can be performed by the bailiff from the jurisdiction of the Court of Appeal (previously, from the lower court's jurisdiction) in which the execution is going to be performed or, in case of execution of assets, by the bailiff from the jurisdiction of the Court of Appeal (previously, from the lower court's |

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| circumscriptia judecatoriei) in care se afla acestea. De asemenea, daca bunurile urmaribile, mobile sau imobile, se afla in circumscriptiile mai multor curti de apel, competenta apartine oricaruia dintre executorii judecatoresti care functioneaza pe langa una dintre acestea. | jurisdiction) in which they are located. Moreover, if the assets, movable or immovable, are located in more Courts of Appeal jurisdiction, the competence pertains to any of the bailiffs having its registered office besides one of these. |
| Cererea de executare silita, insotita de titlul executoriu, se depune, daca legea nu prevede altfel, la executorul judecatoresc competent conform celor mentionate mai sus, acesta avand obligatia ca, in termen de cel mult 5 zile de la inregistrarea cererii, sa solicite instantei de executare incuviintarea executarii silite (in reglementarea anterioara nu era prevazut un termen maxim). Instanta de executare incuviinteaza executarea silita a obligatiei stabilite prin titlul executoriu in termen de cel mult 7 zile de la inregistrarea cererii de incuviintare a executarii silite (vechea reglementare nu prevedea niciun termen privind incuviintarea executarii silite). Incuviintarea executarii silite este de drept valabila si pentru titlurile executorii care se vor emite de executorul judecatoresc in cadrul procedurii de executare silita incuviintate. | The forced execution request, together with the writ of execution, shall be submitted with the competent bailiff according to the above mentioned, with the latest obligation to ask the execution court for the forced execution approval, within no more than 5 days as from the submission of the request (in the previous regulations there was not stipulated a maximal term). The courts of law approves the forced execution of the obligation established through the writ of execution within no more than 7 days as from the submission of the request for the approval of forced execution (the previous regulation did not stipulate any term regarding the approval of forced execution). The forced execution's approval is de jure valid for the writs of execution which shall be issued by the bailiff during the approved forced execution procedure. |
| Legea 202/2010 prevede limitativ situatiile in care instanta poate respinge cererea de incuviintare a executarii silite, respectiv:<br>▪ cererea de executare silita este de competenta altui organ de executare decat cel sesizat;<br>▪ titlul nu a fost investit cu formula executorie atunci cand legea prevede necesitatea indeplinirii acestei cerinte pentru pornirea executarii silite;<br>▪ creanta nu este certa, lichida si exigibila;<br>▪ titlul cuprinde dispozitii care nu se pot aduce la indeplinire prin executare silita;<br>▪ exista alte impedimente prevazute de lege. | Law 202/2010 stipulates a limited number of situations in which the court shall deny the request for the approval of forced execution, as follows:<br>▪ the forced execution request is of the competence of other execution organ than the notified one;<br>▪ the writ has not been enforced with executor formula in those cases in which the law stipulates the necessity of such requirement for the commencement of the forced execution;<br>▪ the receivable is not certain, liquid and due;<br>▪ the writ of execution contains dispositions that cannot be performed through forced execution;<br>▪ there are other impedimenta stipulated by law. |

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| **D) Solutionarea litigiilor prin mediere** | **D) The settlement of disputes through mediation** |
| Cu privire la litigiile care, potrivit legii, pot face obiectul procedurii de mediere, judecatorul poate recomanda partilor sa recurga la mediere, in vederea solutionarii litigiului pe cale amiabila, in orice faza a judecatii. Cu toate acestea, procedura medierii nu este obligatorie pentru parti. | According to the new law, the judge may recommend the parties, in any stage of the cause, to turn to mediation in order to settle the litigation amiable. However, the mediation procedure is not mandatory for the parties. |
| In ceea ce priveste procesele si cererile in materie comerciala evaluabile in bani, in reglementarea anterioara era prevazuta obligatia pentru reclamant de a incerca, inainte de introducerea cererii de chemare in judecata, solutionarea litigiului prin conciliere directa cu cealalta parte. Noua reglementara prevede, pe langa procedura concilierii directe, si posibilitatea solutionarii litigiului prin intermediul medierii. In situatia in care se recurge la mediere, termenul de prescriptie a dreptului la actiune pentru dreptul litigios suspus medierii se suspenda pe durata acestei proceduri, dar nu mai mult de 3 luni de la inceperea ei. | As for the assessable commercial trials and requests, in the previous regulation there was stipulated the obligation for the claimant to try, before submitting the summon claim, the settlement of the litigation through direct reconciliation with the other party. The new regulation stipulates, apart from the procedure of direct reconciliation, the possibility to settle the litigation through mediation. In case of recurrence to mediation, the prescription term of the right of action for the litigious right subject to mediation shall be suspended during this procedure, but no more than 3 months as from its beginning. |
| In cazul in care judecatorul recomanda medierea, iar partile o accepta, acestea se vor prezenta la mediator, in vederea informarii lor cu privire la avantajele acestei proceduri. Partile au dreptul de a decide daca accepta sau nu solutionarea litigiului prin mediere. Pana la termenul fixat de instanta, care nu poate fi mai scurt de 15 zile, partile au obligatia de a depune procesul-verbal privind rezultatul sedintei de informare. | In case the judge recommends the mediation and the parties agree with it, they shall meet with the mediator in order to be informed relative to the advantages of such procedure. The parties have the right to decide whether they accept or not the settlement of the litigation through mediation. Until the term settled by the court, which cannot be shorter than 15 days, the parties are obliged to submit the minute on the information meeting's result. |
| **E) Termenele de judecata** | **E) Judicial terms** |
| In vederea accelerarii solutionarii proceselor, Legea 202/2010 prevede ca, pentru judecarea procesului, instanta, tinand seama de imprejurari, va fixa termene scurte, chiar de la o zi la alta. Totusi, atunci cand considera necesar, instanta va putea fixa si termene mai indelungate. De asemenea, instanta va dispune verificarea efectuarii procedurilor de | In order to speed up the trials procedures, Law 202/2010 stipulates that, for the case's judgment, the court, considering the circumstances, shall settle short terms, even from one day to another. Yet, when necessary, the court shall settle longer terms. Moreover, the court shall dispose the verification of the accomplishment of citation and communication |

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| citare si comunicare dispuse pentru fiecare termen, iar atunci cand este necesar, va ordona luarea masurilor de refacere a acestor proceduri.<br><br>Termenul de judecata poate fi preschimbat doar pentru motive temeinice, din oficiu sau la cererea partilor. Hotararea de preschimbare a termenului se pronunta de catre completul de judecata investit cu judecarea cauzei, in camera de consiliu, fara citarea partilor. Partile vor fi citate de indata pentru noul termen fixat.<br><br>**F) <u>Caile de atac</u>**<br><br>Conform noilor prevederi legale, in afara de hotararile mentionate in vechea reglementare, nu sunt supuse apelului nici hotararile judecatoresti date in prima instanta in cererile introduse pe cale principala privind actiunile in evacuare in materie comerciala si hotararile asupra cererilor pentru repararea prejudiciilor cauzate prin erori judiciare savarsite in procesele penale.<br><br>In ceea ce priveste recursul in interesul legii, acesta este admisibil, conform noilor dispozitii legale, numai daca se face dovada ca problemele de drept care formeaza obiectul judecatii au fost solutionate in mod diferit prin hotarari judecatoresti irevocabile, care se anexeaza cererii. Recursul in interesul legii se judeca de un complet format din presedintele sau, in lipsa acestuia, din vicepresedintele Inaltei Curti de Casatie si Justitie, presedintii de sectii din cadrul acesteia, precum si un numar de 20 de judecatori, desemnati conform legii. Termenul de solutionare este de cel mult 3 luni de la data sesizarii instantei, iar solutia se adopta cu cel putin doua treimi din numarul judecatorilor completului. | procedures disposed for each term, and when necessary, it shall order measures in order to remake such procedures.<br>The judgment term shall be changed only for solid motives, ex officio or at parties' request. The term exchanging resolution shall be pronounced by the panel of judges invested with the case's judgment, in the council chamber, without the citation of the parties. The parties shall be immediately cited for the new settled term.<br><br>**F) <u>Means of appeal</u>**<br><br>According to the new legal provisions, apart from the resolutions stipulated in the previous regulations, there are no longer subject to appeal the resolutions pronounced in first instance over the requests having as subject the evacuation actions in commercial matter and the resolutions over the requests on prejudices reparation caused through judicial errors committed in criminal trials.<br><br>Relative to the recourse in interest of the law, according to the new legal provisions, it is admissible only if it is proved that the legal matters which constitute the object of the judgment have been differently solved through irrevocable resolutions which shall be attached to the request. The recourse in interest of the law shall be tried by a panel of judges constituted by the president or, in his absence, by the vice-president of the High Court of Cassation and Justice, the presidents of its sections, as well as a number of 20 judges, designated according to the law. The settlement term shall be no longer than 3 months as from the date of court's notification and the resolution shall be adopted with at least two thirds of the number of judges. |

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| **2) <u>Amendamente aduse Legii contenciosului administrativ</u>**<br><br>Legea 202/2010 aduce, in materia contenciosului administrativ, o singura modificare, si anume aceea ca, atunci cand este ridicata, in cadrul unui proces, pe cale de exceptie, din oficiu sau la cererea partii interesate, exceptia de nelegalitate a unui act administrativ unilateral cu caracter individual, instanta nu dispune suspendarea cauzei nici atunci cand exceptia de nelegalitate a fost invocata in cauze penale (vechea reglementare prevedea doar ipoteza in care instanta in fata careia s-a ridicat exceptia de nelegalitate este instanta de contencios administrativ competenta sa o solutioneze). | **2) <u>Amendments brought to the Administrative Disputed Claim Office Law</u>**<br><br>Law 202/2010 brings, in the administrative disputed claims matter, a sole amendment, namely that when it is arisen, during a case, through exception, ex officio or at parties' request, the exception of illegality of an unilateral administrative document having individual character, the court does not dispose the suspension of the cause when the exception of illegality was risen in criminal causes (the previous regulation stipulated only the hypothesis in which the court in front of which was risen the exception of illegality is the court of administrative contentious competent to settle it). |
| **3) <u>Amendamente aduse Legii 31/1990 privind societatile comerciale</u>**<br><br>In situatia in care se ataca in justitie o hotarare a adunarii generale care contravine legii sau actului constitutiv, cererea prin care se solicita anularea unei astfel de hotarari se va judeca in camera de consiliu. Noutatea adusa de legea 202/2010 consta in posibilitatea atacarii cu recurs a hotararii pronuntate, in termen de 15 zile de la comunicare. | **3) <u>Amendments brought to companies' Law no. 31/1990</u>**<br><br>In case it is contested in court a resolution of the general meeting concluded with the breach of the law or of the constitutive act, the request through which is required the nullity of such resolution shall be tried in the council chamber. The novelty brought by Law 202/2010 consists in the possibility for the pronounced resolution to be subject to recourse, in 15 days term from its communication. |
| **4) <u>Amendamente aduse Legii nr. 146/1997 privind taxele judiciare de timbru</u>**<br><br>Legea 202/2010 abroga dispozitiile Legii 146/1997, conform carora: "in cazul in care, pana la prima zi de infatisare, partile incheie tranzactie sau renunta la judecata, suma achitata cu titlu de taxa judiciara de timbru se restituie in intregime, iar in cazul in care tranzactia ori renuntarea la judecata intervin ulterior primei zile de infatisare, se | **4) <u>Amendments brought to Law no. 146/1997 on the judicial stamp tax</u>**<br><br>Law 202/2010 abrogates the disposals of Law 146/1997 according to which: "supposing that, until the first day of hearing, the parties conclude a transaction or waive trial, the amount paid as judicial stamp tax shall be integrally reimbursed and, supposing that the transaction or |

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| restituie pana la jumatate din suma achitata, tinand seama de actele procesuale deja indeplinite”. | the waiving of trial intervenes after the first day of hearing it shall be reimbursed up to half of the paid amount, considering the already executed acts. |
| **5) Intrarea in vigoare a dispozitiilor Legii nr. 202/2010** | **5) Entering into force of the disposals of Law no. 202/2010** |
| Dispozitiile legii 202/2010 privind necompetenta de ordine publica si privata, cele care prevad ca hotararea de declarare a necompetentei nu mai este suspusa niciunei cai de atac, precum si dispozitiile privind recursul in interesul legii, se aplica numai proceselor, cererilor si sesizarilor privind recursul in interesul legii, incepute/formulate dupa intrarea in vigoare a prezentei legi. | The disposals of Law 202/2010 on the incompetence of public and private order, those which stipulates that the resolution through which the court declares itself incompetent is no longer subject to appeal, as the disposals on the recourse in interest of the law shall be applied only to those cases, requests and notifications concerning the recourse in interest of the law initiated/drawn after present law’s effective date. |
| Dispozitiile privind competenta executorilor judecatoresti se aplica numai executarilor silite incepute dupa intrarea in vigoare a Legii 202/2010. | The disposals on the bailiffs’ competence shall be applied only to the forced executions started after the entry into force of Law 202/2010. |
| In cazul litigiilor in materie comerciala, aflate in procedura concilierii la data intrarii in vigoare a Legii 202/2010, partile pot conveni fie sa continue aceasta procedura, fie sa recurga la procedura medierii. | In case of commercial litigations which are found in conciliation procedure at the entry into force of Law 202/2010, the parties may agree to continue this procedure or to turn to mediation procedure. |
| Dispozitiile prin care se amendeaza Legea nr. 31/1990 privind societatile comerciale se aplica si proceselor aflate in curs de solutionare in prima instanta daca nu s-a pronuntat o hotarare in cauza pana la data intrarii in vigoare a Legii 202/2010. | The disposals through which Law no. 31/1990 on trading companies is amended shall be also applied to those cases found in course of settlement in first instance if there was not pronounced a resolution in that cause until the entry into force of Law 202/2010. |
| | Yours sincerely,<br>Almaj & Albu, attorneys at law |