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**Draft Ordinance amending and supplementing
Government Emergency Ordinance no. 77/1999 on measures
to prevent payment default**



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Recently, on the website of the Ministry of Economy, Trade and Relations with Business Environment, it has been launched for public debate a draft Ordinance amending and supplementing Government Emergency Ordinance no. 77/1999 on measures to prevent payment default, approved with amendments by Law no. 211/200, as subsequently amended (the “Draft Ordinance”).

What is the scope of the Draft Ordinance

According to the substantiation note published along with the Draft Ordinance, the main purpose is to facilitate the offset process, by switching to an online generation and management of the offset circuits.

What changes bring the Draft Ordinance?

The main amendments introduced by the Draft Ordinance are as follows:

- ◆ Legal entities will prepare the statement of the amounts outstanding for more than 30 days. This term is determined either from the date of issuance of the invoice or from maturity date (if it is clearly specified). This statement will be updated within one working day since any change occurs. The statement will have to include, besides the information previously requested (i.e. name, registered office, number, date and overdue invoices), information on the invoice due date and invoice balance to be paid / received. The statement will

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be submitted electronically at a specified Internet address, in the view of entering in the offset procedure of outstanding debts.

- ◆ The personnel of Offset Unit is obliged to ensure the maintenance, storage and use of data and information communicated by the legal entities. However, data generated / processed in the offset procedures can be made available to the prosecution authorities, the courts and national security bodies, for use in their penal activities to prevent, combat, research, discover and prosecute. It has to be mentioned that the Offset Unit is an organizational structure within the Bucharest Branch of the Training Centre for Industry Personnel, a public institution subordinated to the Ministry of Economy, Trade and Relationship with Business Environment. The Bucharest Branch of this center is in fact the continuer of the activities performed by the former Institute of Management and Informatics (IMI).



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- ◆ Failure to update the statement of the amounts outstanding for more than 30 days, within the period prescribed in the Draft Ordinance, is considered an offence. It is also stated that the cases of failure to comply with the protection and confidentiality of data, information and statements submitted are checked and sanctioned by officers of the General Inspectorate of the Romanian Police and the Department for Fight Against Fraud.
- ◆ Offset orders are uniquely numbered, the track of the related numbers is under the competence of the Offset Department in collaboration with the National Company "National Printing House" S.A..

Draft Ordinance also states that once approved, within 30 days from the date of entry into force, the Government will adopt decisions amending the regulations on monitoring outstanding debts and Rules for offsetting the outstanding debts.

What is the potential impact of this draft ordinance?

Firstly, it seems to confirm the fact that Government Emergency Ordinance no. 77/1999 on measures to prevent payment default ("GEO 77/1999") is still

applicable. It subsisted until now a doubt about the obsolescence of this GEO, given that it was issued in the context of existing financial difficulties in the Romanian economy during the late 90's and it is no longer justified in the context of the economic realities from today. Therefore, the offsets of mutual payables and receivables are made using compensation orders, which represent the justifying documents for registering in the accounting books the settlement of the receivables and payables, which were the subject of the offset.

Although the substantiation note of the Draft Ordinance states that the usefulness of the offset process was proved when an offset circuit included three or more economic operators, the Draft Ordinance makes no limitation in this respect, therefore, it applies to any offset between two or more Romanian legal entities.

Moreover, by corroborating the provisions of the existing legislation, when the Romanian legal persons are seeking to enter in the offset process they have to communicate those invoices (irrespective whether they are outstanding for less than 30 days and regardless of their amount) to the Offset Unit.

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