

Legal Bulletin

January – June 2011

Emigrational Law	2
Commercial Law	4
Social Protection Law	5
Public Law	7
Fiscal Law	9

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Emigrational Law

The normative's act title:

Government Decision nr. 331/05.05.2011 regarding the issuing of invitations for foreigners

Publication:

Official Legal Monitor 78-81/381 from 13.05.2011

Came into force:

13.05.2011

Main provisions:

On 5th May 2011 by Government Decision no. 331 have been done changes to the Regulation on the issuance of invitations for foreign citizens.

These measures have been taken by the Government in the set of documents aimed at facilitating the visa regime for foreign citizens of a number of countries and harmonization of legislation in this area with the European standards.

So, for the purposes of this regulation, "The invitation is an official document which a foreign competent authority is issuing on request of individuals with permanent or temporary residence in the Republic or under a legal person's request." This document is of strict accounting, unique throughout the country and is valid within the period indicated.

Classification of the documents necessary for inviting a foreigner to the Republic of Moldova is different for a physical person and for a legal person. But in both cases, inviting people or their representatives are informed about the alien's regime in the Republic of Moldova, as well as about the commitment to bear the cost of residence and eventual expulsion of foreigners from the country, in the case if this does not leave the country within the granted period.

An improvement in the method of issuing the invitation is the period

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within which applications are reviewed. If in the previous legislative act, the term was 30 days, now he is reduced to 15 working days from the date of depositing the request, and if the trip aim the urgent treatment of the guest, the poor state of health or a close relative's or her death - in within 3 working days. The demarches made by the central authorities will be settled within 3 working days. However, it was amended and the validity term of the invitations, the term being reduced from 6 months (according to the old Regulation), up to 90 days currently.

Also, the new provisions extend and define exactly the cases when it may be issued a refusing decision to issue a invitation for the alien, this excluding the application of double standards.

However, given the dynamics of international bilateral relations between Moldova and a number of countries it was reduced the list of countries whose citizens do not require invitations to apply for visa to enter into the country. Thus from the total number of 143 states, were excluded the following European states: Albania, Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, and Serbia. From Latin America: Argentina, Brazil, Bolivia, Ecuador, Chile, French Guiana, Peru, Paraguay, Uruguay and Venezuela. From North America: Bahamas, El Salvador, Guadeloupe, Guatemala, Honduras, Mexico, and Nicaragua. From Asia: South Korea, Malaysia, and Turkey.

At the same time were excluded from this list Australia and New Zealand. In total, currently a number of 28 states benefit from an easier regime.

For the invitation, inviting person or her representative, pays a state fee in accordance with the Law on state tax and, where appropriate, charges for speed the services, as reflected in the Nomenclature of services paid in favor of subdivisions of the Ministry of Internal Affairs and tariffs on them, approved by the Government.

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Commercial Law

The normative's act title: Law no. 231 of 23 September 2010 on internal trade

Publication: Official Monitor No. 205 -209 / 681 from 22.10.2010

Came into force: 22.04.2011

Main provisions: The purpose of adopting a new law in the internal trade area is to establish a legal framework necessary for carrying out trade and establish rules for conducting trade activities, by network development of the commercial distribution of products and services while respecting freedom of competition, protection of life, health, security and economic interests of consumers. This law sets out general principles for conducting trade activities in the Republic of Moldova and harmonize national legislation with European directives.

Thus, we find for the first time, among the new terms, the legal definition of the term "**trader**" - "*legal person or individual entrepreneur register under the laws and authorized to make activities in trade*", as well as the definition of the "**small trader**" - "*person engaged in trade activity without state registration*".

Under the new regulations are set out the main forms of business trade and namely: wholesale, retail, trade services, including public food service. Article 12 also regulates the markets activity, fact that was not regulating by the previous law.

In order to respect consumer rights has been set certain conditions for traders, which also will raise the level of service for consumers. Thus, for developing commercial activity the traders must be professionally trained, to be registered as required by law, to obtain authorization to operate and be licensed under the licensing conditions established by Law no. 451-XV of 30 July 2001 on licensing certain types of activity. It is welcome that the rules regarding obtaining the authorization of commercial establishments, including the grounds for refusal, were set down by the law.

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Chapter V of the Law set down general rules on the marketing of products and services, where are set certain conditions on the labelling and packaging of the products, including certain trading rules which operators are obliged to respect.

Under Chapter VI of the new law, control of the state in trade sector, which can be economically-financially and technically, is secured through its specialized bodies: the Centre for Combating Economic Crimes and Corruption, the State Tax Service and other specialized bodies with control functions.

The last chapter sets out the entry into force of the law and the practical implementation of its legal provisions. Finally, we consider that the new law will ensure adequate consumer interests protection, as well as defence of commercial interests of the internal market and will help establish a transparent set of rules on the market.

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Social Protection Law

The normative's act title: Government Decision no. 150 of 14.03.2011 on the indexation of social security pensions and state social benefits

Publication: Official Monitor nr. 40-42/181 from 18.03.2011

Came into force: 18.03.2011

Main provisions: According to provisions of the art. 13 of the Law on state social insurance pensions on 1st of April the pensions are indexed. However it is important to mention that only the pensions paid from funds of the state social insurance budget will be subject to indexation.

Indexation factor is established annually by the Government.

Thus, by Government Decision no. 150 of 14.03.2011 pension indexation coefficient is established in 2011 to 7.8% and the following categories of pensions are indexed:

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- 1) all types of pensions, established and recalculated under the Law no.156-XIV of 14 October 1998 on State social insurance pensions;
- 2) seniority pensions established under the Law on State pensions in the Republic of Moldova nr.437-XII of 27 December 1990 and Government Decision nr.865 of 29 December 1992, which are paid from the means of the social security State budget;
- 3) pensions of civil public servants, established under the Law No. 443-XIII of May 4, 1995;
- 4) pensions of the officials, established under the Law on customs service 1150-XIV of 20 July 2000;
- 5) disability allowances, established under the Law on insurance for work accidents and occupational diseases nr. 756-XIV of 24 December 1999.

Thus, starting from 1 April 2011 was set out the coefficient of indexation of periodical capitalized payments, established under the Law no.123-XIV of 30 July 1998 concerning the capitalization of periodical payments in the amount of 7.8%. Indexing capitalized monthly payments to beneficiaries who, after an accident, suffered a trauma or have contracted an occupational disease are subsequently paid from the state budget;

The same rate of indexation in the amount of 7.8% is applied to the pensions, established under the Law nr.909-XII of 30 January 1992 on social protection of citizens suffered from Chernobyl disaster;

On April 1st 2011 are indexed also the pensions established under the Law of pension insurance of the military personnel and people from the army command and the internal affairs bodies No. 1544-XII of 23.06.1993, in the amount of 7.4%, given the average of the annual growth of consumer price index for the previous year.

State social allowances, except for care allowance, are indexed by the coefficient established in the amount of 7.4%. Also note that the subject of indexing is only the part of the pension paid from the state social insurance budget.

Furthermore is indexed the monthly cash compensation set by

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Government Decision nr.1189 of 22.10.2008 in exchange for food and dietary supplements to persons participating in liquidation of consequences of Chernobyl and nuclear testing, ionizing radiation accidents and their consequences at civilian or military nuclear targets, in an amount of 7.4% based on annual growth of consumer price index for the preceding year.

According to the Government Decision nr. 150 of 14.03.2011 subject of indexing were about 665,200 pensions and social allowances, including 461,500 for retirement.

Thus, from April 1, 2011 the amount of minimum indexed pension is:

570,66 lei - the amount of old-age pensions for agricultural workers, compared with 529 lei up to indexing;

641,00 lei - the amount of old-age pension of the other beneficiaries, compared with about 594 lei so far;

456,02 lei - the amount of grade I disability pension;

440,36 lei - the amount of grade II disability pension;

310,08 lei - the amount of grade III disability pension.

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Public Law

The normative's act title:

Draft of the Law on Protection of Personal Data no. 17-XVI of 15.02.2007 and the draft on amendments to some legislative acts, art. VI. of the Contravention Code of the Republic of Moldova no. 218-XVI of 24 October 2008 (Official Monitor of the Republic of Moldova, 2009, no. 3-6, art. 15), as amended and supplemented

Come into force:

07.01.2012 - the draft on amendments to the Contravention Code of the Republic of Moldova no. 218-XVI of 24 October 2008

Main provisions:

At present, the experience shows that ensuring the inviolability of person, home and other fundamental rights are co-lecture with respect of another fundamental right, namely the inviolability of

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privacy through the protection of personal data.

The National Centre for the Protection of Personal Data (hereinafter CNPDCP) in its activity report for 2010 noted a number of deviations from legal norms, and the operators process the personal data, without taking into consideration the legal provisions.

For example, the courts published on their official websites decisions and judgments, include in those the subjects' personal data such as name, date, month, year of birth, identification identity card, family status Health status, etc.. Publication of judicial decisions aim is to stimulate discussion on the law practice as a source of law, but not to notify to third parties the personal data of the persons involved in litigation. CNPDCP has detected and other irregularities in the collection, processing, dissemination of personal data by the operators and noted in its report the legislative gaps and the need to complete with necessary regulatory the Contravention Code.

The Law on protection of personal data from 15.02.2007, in force, is very vague and does not cover real situations, so it shows a lack of solutions in specific cases.

The Draft of the Law on Personal Data Protection (hereinafter Project) completes the current regulations, thus defines the basic concepts and expands the scope of the law. Article 5 of the Project lists the special cases where it is prohibited to process personal data.

Article 8 of the Project provides methods for processing personal data on health status, sets out circumstances in which medical professionals may process personal data and exceptions when collecting personal data may be made without the consent of the subject of personal data. Innovative regulations contained in the project is the right of the subject of personal data to object, which may object at any time, on compelling legitimate grounds relating to his particular situation. In case the opposition is justified, the processing performed by the operator can no longer involve those data.

In the case where were violated rights guaranteed by the Project, the subject of personal data is entitled to address in the court. This project would remain without practical application if would not

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make legislative amendments and to the Contravention Code No. 218-XVI from 24.10.2008, by which is proposed to introduce the Chapter VI¹ "*Contraventions that violate the rights and freedoms while processing of their personal data.*".

The draft of the project contains three articles which aim the penalties applicable in cases of Processing the personal data with the breach of legislation on personal data protection (art. 74¹), the refusal to provide information or preventing the access to the staff of the National Centre for Data Protection with Personal Character (74²), Failure to execute the decisions of the Control Body in the area of processing personal data (art. 74³).

The need to ensure an adequate level of protection of personal data is a prerequisite that appears in the text of association agreements, conventions and treaties to which Moldova is party.

In conclusion, we can say that the entry into force of the Draft of the Law on Protection of personal data and the amendments to the Contravention Code nr. 218-XVI of 24 October 2008 would allow the establishment of clear rules on the processing of personal data would extend the rights of the CNPDCP and would attribute to it the quality of confirmation agent, which will enable the preparation of the minutes, making it possible to attract in the court of the offender and applying appropriate sanctions.

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Fiscal Law

The normative's act title: Fiscal Code no. 1163-XIII of April 21, 1997 was modified and completed by the Law on amending and completing certain acts no. 48 of March 26, 2011.

Publication: Official Monitor no. 53/114 from April 4, 2011

Came into force: April 4, 2011

Main provisions: Recent changes brought to the Fiscal Code by the Law no. 48 of March 26, 2011, provides in the articles 101 (4), 109 (1) and 115 (2) that starting with April 4, 2011, entrepreneurship subjects that

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import services pay VAT on the payment date, including the prior payment for the non-residents for the imported service.

The date of the tax liability on VAT for the import of services in the previous editorial was the date of service delivery indicated in the document confirming the service. According to the new version the date of tax liability is the date of payment, including advance payments for imported services (art. 101, 109, 115).

The previous version was creating problems in application in terms of the existence of a gap between the date of issuance by non-residents of the document certifying the service and the date of receipt of the document by the beneficiary of the service.

At the time of the entry into force of the amendments, in terms of tax liability on the subjects that purchase imported services may arise two situations:

- 1) the import of services is made up to April 4, 2011, and the payment - after this date;
- 2) the payment for imported services is made up to April 4, 2011, and the import - after this date. Thus, for the both situations the moment of tax liability on VAT will be considered the date of the service provision, indicated in the document confirming the provision of the service.

Another amendment passed by the Law no. 48 of March 26, 2011 is the introduction of the obligation of taxpayers (see paragraph (21) art. 187) to present reports to the State Tax Service authorities using the automated electronic reporting methods (internet). This way of reporting will be progressively implemented as follows:

- a. from January 1, 2012 the obligation will reflect to subjects of taxation with VAT, which are served by the Main State Tax Inspectorate, State Tax Inspectorate of Chisinau, the State Tax Inspectorate of Balti and Tax Administration Department of Comrat;
- b. from January 1, 2013 the obligation will reflect to rest of the subjects of taxation with VAT.

This amendment is welcome, because the time of presentation of reports and their processing will be reduced considerably.

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The transition to automated electronic reporting methods will benefit more the tax authorities responsible for the operational processing of information, reducing costs of introducing a series of data reports in the database of the State Tax Service.

At the same time, for certain economic agents transition to this system will require additional costs, as prices for electronic reporting system are quite high.

We consider that nominated services should be provided to taxpayers at a lower price, in order to avoid additional expenses in the current economic conditions.

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