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# Legal Bulletin



## Real Estate

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### 1. Amendment and supplementation of the Forestry Code

## Law No. 133/2015 amending and supplementing Law No. 46/2008 on the Forestry Code

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Law No. 133/2015 amending and supplementing Law No. 46/2008 - Forestry Code (the “Forestry Code” or the “Code”) was published in the Official Journal of Romania, Part I, No. 411 of 10 June 2015. The law came into force on 13 June 2015.

The main amendments to the Forestry Code are as follows:

### 1. Amendment of certain rules regarding the permanent deregistration from the national forest fund

For the construction or extension of houses or holiday dwellings, the concerned lands may be permanently deregistered from the national forest fund, provided that the following requirements are cumulatively fulfilled:

- The land and related construction are owned by the same person;
- The maximum area that may be permanently deregistered from the forest fund, including the construction, the access and the enclosure, does not exceed 250 sqm (for forest properties of more than 5 ha) or maximum 5 % from the area of the forest property, but not more than 200 sqm (if the area of the forest property is smaller than 5 ha).

The new regulation sets forth that the authorization to build less than 50 m away from forest margins and outside the forest fund is granted subject to the endorsement of the territorial structure of the central public authority in charge of forestry activities, based on the submitted documentation where the position is given in stereographic projection 1970.

## **2. Exceptions to the rule of the interdiction to give under concession the forest fund which is the public property of the State**

The old regulation provided that the forest fund, public property of the State, cannot be given under concession, except for the lands adjacent to the assets which are sold by the Romanian National Forest Administration - Romsilva.

The new regulation reiterates this rule, but it supplements the already provided exception. Thus, the lands related to assets which are sold, in accordance with the law, by the Romanian National Forest Administration - Romsilva, may be given under concession throughout the existence of the buildings, but not more than 49 years as of the date when the concession contract was concluded.

In addition, a new exception to the aforementioned rule is introduced, according to which the lands adjacent to facilities built before 1990, other than those provided in Electricity and National Gas Law No. 123/2012, as further amended and supplemented, which are operational on the effective date of the Forestry Code, may be given under concession as long as the facilities are operational, but not more than 49 years after the conclusion date of the concession contract, provided that the facilities are maintained.

## **3. Introduction of new provisions regarding the purchase, processing and exploitation of timber**

The principle according to which the valorisation of standing timber is done only to authorized economic operators is regulated by the Code. An economic operator or a group of economic operators may buy at auction or negotiation, as the case may be, the wooden materials resulting from main products or incidental products I<sup>1</sup>, in the form of round shaped wood subject to road transportation, only if, by its own capacity, it ensures the processing of at least 40 % of the purchased wooden material. Also, an economic operator or a group of economic operators cannot purchase or process more than 30 % of the volume of an industrial assortment of timber from each species, established as an average of the last 3 years based on the valorisation deeds authorized for exploitation and exploited at national level, regardless of the form of ownership.

The new regulation sets forth, in favour of manufacturers in the furniture industry, a pre-emption right for the purchase of timber (for the offered price and under equal sale conditions) from forests which are the public property of the State, in the form of shaped wood, based on the estimated annual requirements.

## **4. Amendment of the provisions regarding the management of the forest lands**

For forest lands, the Code sets forth that the ownership right shall be exercised as of the issuance date of the minutes for the transfer of possession. Starting with this date, the new owners are

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<sup>1</sup> The incidental products I are the trees from a brush fully affected by biotic and/or abiotic factors, the trees from a brush with the age higher than ½ of the technical exploitability age, partially affected by biotic and/or abiotic factors, or trees/brushes for which legal clearing approvals exist.

bound to provide management/ forestry services in relation to the forest lands, according to the Forestry Code.

#### 5. Arrangement and management of forests

The new Forestry Code provides that for forest properties larger than 10 ha, the performance of forestry surveys (in Romanian “*amenajamente silvice*”) is mandatory. *Per a contrario*, for properties that are included in the forest fund with an area smaller than 10 ha, the performance of forestry surveys is optional.

According to the new provisions, the owner of a property with the area of maximum 10 ha, that concluded a management or forestry services agreement for a period of minimum 10 years, may harvest a volume of maximum 3 cubic meters/year/ha from such forest property, depending on the structural characteristics of the brush.

The management, as well as the provision of forestry services, as the case may be, shall be performed via authorized forest divisions of two types: State-owned forest divisions and regime forest divisions (the regime forest divisions replace the former private forest divisions). According to Article 10 para. (3) of the Code, the forest divisions are of public interest and can also manage or provide forestry services, as the case may be, for other forest properties, based on contracts, which are writs of enforcement in what concerns the amounts owed by the owner for the management or provision of forestry services, as the case may be<sup>2</sup>. Thus, the forest divisions can now recover their receivables much more easily, because such forestry management and service agreements are writs of enforcement.

#### 6. Implementation of an environmental protection policy

The new form of the Forestry Code reflects an essential change of the State’s policy in what concerns environmental protection. To that effect, the principle of continuity and permanence of forests was introduced as one of the four principles based on which the central public authority in charge with forestry matters issues the regulations for the performance of forestry surveys.

Moreover, the Romanian National Forest Administration - Romsilva may purchase lands, particularly degraded lands, for forestation purposes in order to increase the area of forest fund that is the public property of the State. Such actions shall be financed from: the funds of the Romanian National Forest Administration - Romsilva, the fund for the improvement of forestry land fund, the forest conservation and regeneration fund and the State budget.

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<sup>2</sup> The exception to this rule is the situation of the forest division of the *Regie Autonome* for the Management of State Protocol Real Estate, which may provide management or forestry services only for the forest fund that it manages.

## Editors

Our **Real Estate** team handles a wide variety of sophisticated transactions, covering legal and regulatory issues in purchase and sale, property finance, leasing and concession, property insurance, public and private construction, public works, property development and investment, mortgages and other collaterals as well as recovery and security enforcement, joint ventures and leasing of all types of properties, especially residential and office projects.

We act on a regular basis for investment funds, developers, end-users, banks and investors and are actively involved in all aspects of title clearing, the negotiation and preparation of documents and, when required, the prosecution or defense of foreclosure, bankruptcy and related litigation.



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