TUCA ZBARCEA
ASOCIAȚII

Attorneys at law

Legal Bulletin

June - July 2012

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Associations and Foundations

Name of the enactment	Law No. 145/2012 amending and supplementing Government Ordinance No. 26/2000 on associations and foundations ("**Law No. 145/2012**")
Publication	Official Gazette of Romania, Part I, No. 517 of 26 July 2012
Entry into force	29 July 2012
Connections with other enactments	Government Ordinance No. 26/2000 on associations and foundations ("GO No. 26/2000")
Main provisions	Law No. 145/2012 brings a series of amendments to the legal framework provided by GO No. 26/2000 on granting of 'public utility' status to associations, foundations and federations, regulating stricter rules to this effect. The amendments mainly concern the conditions required to be fulfilled and the documents to be submitted upon filing such an application. As to the conditions to be fulfilled, in addition to those provided by the former regulation, Law No. 145/2012 provides that the associations, foundations or federations seeking to obtain the 'public utility' status must fulfil the following conditions: • To have achieved part of the intended objectives, demonstrating a continuous activity by significant actions; • To hold the proper assets, logistics, members and staff necessary to achieve their intended purpose; • To be able to provide documentary evidence attesting to the existence of cooperation and partnership agreements executed with public institutions or associations or foundations in Romania and abroad; • To be able to provide documentary evidence attesting that they obtained significant results with respect to their intended purpose, or to submit recommendation letters issued by the competent authorities in Romania or abroad, recommending the continuation of the activity. Also, Law No. 145/2012 eliminates the requirement that the value of the assets of the applicant associations, foundations or federations, for each of the three preceding years shall be at least equal to the value of their initial assets.

Also, be advised that Law No. 145/2012 abrogates the provisions of GO No. 26/2000 which facilitated the obtaining of 'public utility' status by the associations or foundations resulting from the merger of two or several pre-existent associations or foundations.

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Capital Market

Name of enactment	Government Emergency Ordinance No. 32/2012 ("**GEO No. 32/2012**") on undertakings for collective investment in transferable securities, and investment management companies, and amending and supplementing Law No. 297/2004 on the capital market ("**Law 297/2004**")
Publication	Official Gazette of Romania, Part I, No. 435 of 30 June 2012
Entry into force	10 July 2012
Connections with other enactments	• Romanian National Security Commission (NSC) Regulation No. 15/2004 on the authorization and operation of investment management companies, undertakings for collective investment in transferable securities and depositories; • Law No. 297/2004 on the capital market ("**Law 297/2004**").
Connections with EU Law	GEO No. 32/2012 transposes in the national legislation the provisions of the following directives: • Directive No. 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities ("**UCITS**"); • Directive 2010/43/EU implementing Directive 2009/65/EC as regards organizational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company ("**IMC**" – investment management corporation); • Directive 2010/44/EU implementing Directive 2009/65/EC as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure and of other relevant enactments related to the capital market, which were issued before the entry into force of Law No. 297/2004 but which have not been implemented yet.

Main provisions

News regarding IMCs

According to GEO No. 32/2012, IMC may carry out in another Member State the activities and services for which they were authorized in the Member State of origin, either by establishing a branch, or directly, based on the free circulation of services, without any additional requirements (e.g. a minimal level of the capital, obtaining a permit or equivalent measures from the competent authority of the host Member State).

Also, GEO No. 32/2012 details the conditions for the authorization, suspension and withdrawal of an IMC permit, the services provided thereby, the prudential rules, the procedures for avoiding conflicts of interest, risk management policies, evaluation procedures, as well as the method for sending information regarding derivatives traded outside the regulated markets, which the IMC has to implement for the purpose of aligning to the EU Law.

According to the new regulations, the agreement between IMC and the depository has to contain at least the following provisions:

- The description of procedures, including those related to the keeping of assets, the procedures that need to be followed in case of amendments to the rules of the fund or to the prospectus of the UCITS stating the time when the depository needs to be informed or the cases where the prior approval of the depository is required;
- The description of the methods and procedures whereby the depository will have access to the useful information it needs in order to fulfil its obligations;
- The description of the procedures whereby the depository will proceed to checking the activity of the IMC, as well as those whereby the IMC may examine the performance of the depository with regard to the observance of the contractual obligations thereof;
- The confidentiality obligation;
- If the depository or the IMC appoints third parties for the compliance with the undertaken obligations, they will include in the agreement both parties' commitments to supply regularly details on third parties appointed to fulfil the tasks undertaken by the IMC or by the depository;
- A statement according to which the depository's liability will not be

affected if a third party is placed in charge with the assets it manages / a part thereof;

- The conditions under which the amendment and termination of the agreement will be operative, as well as the availability period thereof.

News regarding UCITS

With regard to UCITS, the simplified prospectus will be replaced, within 6 months from the entry into force of GEO No. 32/2012, by the document entitled "*Key Information for Investors*", made available free of charge, which will be drawn up in the official language or in one of the official languages of the host Member State of the UCITS or in a language approved by the competent authorities of that Member State and which will contain the core features of the UCITS so that the investors may understand the nature and risks thereof.

Also, GEO No. 32/2012 regulates the simplified procedure of notification whereby: (i) UCITS' authorized in other Member States may distribute equity in Romania; or by which (ii) UCITS authorized in Romania may distribute equity in Member States.

In addition, GEO No. 32/2012 establishes the mechanisms for a better cooperation between NSC and the competent authorities of other Member States with regard to the granting of assistance and the accurate supply of information.

Another new element provided by GEO 32/2012 is the possibility to operate national and trans-border mergers between UCITS.

The mergers will be previously authorized by NSC, in cases where Romania is the Member State of origin of the absorbed UCITS, with an analysis of the potential impact of that merger on equity holders.

Yet another new element provided by GEO No. 32/2012 is the transposition of the provisions set forth by the European Directives regulating the legal regime of feeder and master UCITS.

According to the law, a feeder UCITS is that UCITS (or an investment division thereof) authorized to invest at least 85% of its assets in equity issued by another UCITS or by an investment division thereof which is the master UCITS.

The master UCITS is that UCITS which cumulatively complies with the following requirements: (i) it has at least one feeder UCITS among its equity holders; (ii) it is not itself a feeder UCITS and (iii) it does not hold equity of a feeder UCITS.

Amendments and supplementations brought to Law No. 297/2004

The main amendments and supplementations brought to Law No. 297/2004 are:

- The regulation of "delegate agents", individuals or legal entities operating under an agreement concluded with and under the full and unconditional responsibility of a single company of financial investment services, on behalf of which it acts; the activities carried on by delegate agents may consists in: promoting investment services and/or ancillary services to clients or potential clients; taking and communicating instructions or orders from clients related to financial instruments or investment services; investing financial instruments and/or providing clients or potential clients with consultancy services on such instruments or services;
- The specific definition of the "independent operator" as the agent which concludes transactions on its own account in an organized, frequent and systematic manner by executing the clients' orders outside of regulated markets or of alternative trading systems;
- The specific regulation of the possibility for Romanian financial investment service companies to provide investment services and activities in a non-Member State, by merely setting up a branch, subject to the prior approval of NSC;
- The regulation of the possibility to sell securities starting from the time of their purchase, according to the rules of the market on which those securities are traded and to the rules of the central depository;
- Setting rules that ensure the correlation with the provisions under the New Civil Code in terms of movable mortgages;
- Amendments on organizing and conducting public offers, (e.g. the information contained in offer prospectuses, the structure of prospectuses, cases where the drafting of prospectuses is not mandatory, the calculation of the offer price, etc.), as well as establishing new rules on advertisement and transparency;
- A much stricter regulation of deeds that constitute misdemeanours or offences, and a stricter individualization among penalties applicable in such cases, corresponding to the seriousness of the deeds.

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Employment

Name of the enactment	Law No. 147/2012 amending Article 139 (1) of Law No. 53/2003 – Labour Code ("**Law No. 147/2012**")
Publication	Official Gazette of Romania, Part I, No. 509 of 24 July 2012
Entry into force	27 July 2012
Connections with other enactments	Law No. 53/2003 – Labour Code (the "**Labour Code**")
Main provisions	Law No. 147/2012 amended Article 139. (1) of the Labour Code which sets forth the legal holidays when businesses are closed, in the sense of adding 30 November – Apostle Saint Andrew, the First-called, Romania's Patron Saint as a non-business day.
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Energy

1 Electricity and Natural Gas

Name of enactment	Law No. 123/2012 on electricity and natural gas ("**Law No. 123/2012**")
Publication	Official Gazette of Romania, Part I, No. 485 of 16 July 2012
Entry into force	19 July 2012
Connections with other enactments	• Gas Law No. 351/2004 • Electricity Law No. 13/2007
Connection with EU Law	Law No. 123/2012 transposes the third energy package into the domestic legislation: • Title I transposes **Directive 2009/72/EC concerning common rules for the internal market in electricity** and repealing Directive 2003/54/EC and Directive 2005/89/CE concerning measures to safeguard security of electricity supply and infrastructure investment; • Title II transposes **Directive 2009/73/EC concerning common rules for the internal market in natural gas** and repealing Directive 2003/55/EC.
Main provisions	**Electricity** Law No. 123/2012 primarily reviews certain concepts and notions provided by Law No. 13/2007 so as to ensure compatibility of the meaning thereof with EU Law in the field. To this effect, the concept as "supplier of last instance" is replaced by "supplier of last resort"; in addition, concepts such as „guaranteed access to the

grid-system of electricity", "priority access to the grid-system of electricity" and "processing agreement".

Law No. 123/2012 was primarily passed with a view to liberalizing the regulated electricity market and increasing the weight of competitive market as compared to the regulated market. This target is to be gradually achieved, by adopting certain sets of measures. Consequently, a gradual elimination of regulated rates is established, which elimination shall be performed as follows:

- 1 September 2012 – 31 December 2013, for non-residential customers;

and

- 1 July 2013 – 31 December 2017, for residential customers.

The schedule of gradual elimination of the regulated prices in the field of electricity was approved by a memorandum of the Government of Romania, which may be accessed at http://anre.ro/download.php?id=4348.

Considering that dropping the regulated prices may generate negative effects, Law No. 123/2012 establishes ANRE's (Romanian Energy Regulatory Authority) obligation to prepare yearly reports on the impact of such step, being given the possibility to establish certain public service obligations incumbent upon the participants in the market with a view to securing consumers' supportability of electricity prices.

With a view to increasing the weight of the competitive market as compared to the regulated market, access to the energy market is secured to as many participants, producers, suppliers and end customers as possible. Refusal of such access shall have to be properly grounded and supported by objective criteria, from a technical and economic standpoint, according to the regulations issued by ANRE.

Electricity producers shall have to tender all the available electricity publicly and on a non-discriminatory basis on the competitive market. Inter alia, please be informed that, according to Law No. 123/2012, electricity producers and suppliers may supply their own headquarters, subsidiaries or eligible customers by means of direct lines. However, this possibility is conditional upon the absence of an economically and technically reasonable tender for the access to the public interest electricity grid-system.

As to electricity deals, they shall be performed in a transparent, public, centralized and non-discriminatory fashion. ANRE shall continuously monitor the effect of

the regulated market on the competitive market of electricity and shall take the necessary steps with a view to increasing the degree of transparency of the commercial deals and avoiding potential distortions.

The transmission system operator shall be organized and shall operate as per the model of the independent system operator. This allows the certification of the transmission system operator in observance of the EU law provisions, as Law No. 123/2012 regulates the certification requirements and procedure. Within 24 months from the entry into force of Law No. 123/2012, the competent ministry shall assess the operation of the transmission system operator based on the above model and, if applicable, shall propose to the Government the adoption of the ownership unbundling model.

As to the permitting system, no permit shall be given to the applicants whose shareholders holding control or directors have been previously shareholders holding control or directors of certain license-holding economic undertakings that failed to pay the debts arising out of the deals closed on the electricity market. In addition, the activities that do not require obtaining a license for the commercial operation of power capacities are expressly regulated.

Law No. 123/2012 provides the right to conclude agreements with several electricity suppliers at the same time, for a single consumption place. This right is given exclusively to large-sized non-residential customers, whose maximum power approved under the technical connection approval is set forth under ANRE's regulations.

Law No. 123/2012 establishes the possibility of limiting the excessive increase in prices/rates or blocking same for a limited period of maximum 6 months, in cases of major imbalances between demand and supply and obvious failings of the electricity market. Such decision may be passed by the Government, upon the proposal of ANRE, and after having obtained the approval from the Competition Council. The 6-month period may be successively extended by no more than 3-month periods.

Natural Gas

First, Law No. 123/2012 brings certain terminology amendments that are not however substantial. Among such amendments, one should note that the concept of "consumer" is replaced by that of "customer", which is no longer conditional upon own consumption; the consumer in the former regulation becomes "final customer" with Law No. 123/2012.

A new concept brought by Law No. 123/2012 is that of "vulnerable customer", together with the regulation of the measures of protecting same. More precisely, the vulnerable customer (i.e. the final customer belonging to a class of residential customers that, due to age, health or low income reasons, is facing the risk of being socially marginalized and that, with a view to preventing such risk) shall benefit from social protection measures, including in terms of finances. The social protection measures and the eligibility criteria thereof shall be established by means of special enactments; nevertheless, Law No. 123/2012 itself provides the fact that the Government, having obtained the approval from the Competition Council, may decide to establish a solidarity fund designed to financially support the vulnerable consumer out of the contribution and/or additional taxation of unanticipated profits of electricity and natural gas producers and suppliers, obtained as a result of favourable situations on the market and/or conjectural deals [Article 201 (3)]. The rules on the fund establishment and use are to be established by Government decision.

Title II of Law No. 123/2012 regulates the regulation framework for carrying out activities concerning production, transmission, distribution, supply and storage of natural gas, the organization and operation of the natural gas sector, market access, and criteria and procedures applicable to the permit and/or license-granting process in the natural gas sector. Noteworthy, the concession granting for the operation of production areas remains with the National Agency for Mineral Resources, in accordance with Oil Law No. 238/2004.

The upstream pipelines receive a more detailed regulation under Law No. 123/2012. The natural gas producers in charge of the operation, maintenance and, if necessary, development of upstream pipelines in a certain area shall be named operators of upstream pipelines. The operation of the production-related upstream pipelines shall be performed on a license basis, which license is to be issued by ANRE, and the gas producers shall have the obligation to hold such license [Articles 100 (62), 118 (2), 119 (3.c), 124 (1)]

The gas production shall have to be made available with priority to the suppliers with a view to covering the consumption on the regulated market, in accordance with the regulations of ANRE on the observance of the price liberalization schedule and securing natural gas for captive customers, suppliers being bound to observe the destination of such quantities of natural gas; the remaining own production, save for the quantity of natural gas used for technological consumption, shall be made available on the competitive market [Article 124 (1.e)]

Considering that it is intended to progressively liberalize the natural gas market, Law No. 123/2012 regulates the framework for a gradual elimination of the regulated rates for final customers. The price liberalization terms are as follows:

- 1 December 2012 through 31 December 2014 for non-residential customers, save for the case when, on such date, a significant difference is found out between the price for the sale of domestic production and the European import price, which may endanger market stability, in which case the term is extended until 31 December 2015;
- 1 July 2013 through 31 December 2018 for residential.

The actual schedule for price liberalization is not part of Law No. 123/2012, and shall be regulated by Government decision. To this effect, ANRE published a Memorandum, which may be accessed at the following address: www.anre.ro/download.php?id=4349.

The wholesale centralized competitive market is managed by the operator of the natural gas market or by the operator of the balancing market, as the case may be. The operator of the natural gas market (or the operator of the balancing market) is an institution newly inserted by Law No. 123/2012 and, probably, this position shall be awarded to OPCOM S.A., the manager of the electricity market.

The competent ministry (currently, the Ministry of Economy, Commerce and Business Environment) is the authority that shall carry out the national action plan in cases of energy poverty, defining critical situations and customers that may not be disconnected in such situations (such as vulnerable customers) [Article 101 (n)]

Repealed enactments

- Electricity Law No. 13/2007, except for Articles 7 through 11;
- Gas Law No. 351/2004, except for Articles 6 through 10.

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2 Electricity Generation from Renewable Sources

Name of enactment

Law No. 134 of 18 July 2012 approving Government Emergency Ordinance No. 88/2011 on amending and supplementing Law No. 220/2008 establishing the system for the promotion of electricity generation from renewable sources (**"Law No. 134/2012"**)

Publication

Official Gazette of Romania, Part I, No. 505 of 23 July 2012

Entry into force

26 July 2012

Connections with other legal enactments

Government Emergency Ordinance No. 88/2011 on amending and supplementing Law No. 220/2008 establishing the system for the promotion of electricity generation from renewable sources ("**GEO No. 88/2011**")

Law No. 220/2008 establishing the system for the promotion of electricity generation from renewable sources, republished, as further amended and supplemented ("**Law No. 220/2008**")

Main provisions

The main provisions of Law No. 134/2012 refer to:

- The possibility to cumulate green certificates ("**GCs**") with state aids in the case of power plants commissioned before 1 January 2013 to which state aids were granted or for which state aids were approved before the support scheme was authorized by the European Commission.
- The obligation incumbent on suppliers and producers to acquire, on a quarterly basis, a number of GCs equivalent to the value of the mandatory annual quota for acquisition of GCs established for the relevant year multiplied by the amount of electricity supplied to end consumers on a quarterly basis. If any suppliers or producers fail to observe such mandatory quarterly quota, they have the obligation to pay the maximal price of the GC, as approved and published by the National Energy Regulator ("**ANRE**") for the relevant year, for each GC that was not acquired, within 45 days from the end of the quarter, in a guarantee fund securing the operation of the electricity market, established and managed by the electricity market operator ("**OPCOM**"). This guarantee fund is meant for the purchase, pro rata to the electricity output, of unsold GCs from all renewable electricity producers that file an application in this respect, against a price at least equal to the minimal price of the GC established by law.
- The measures proposed by ANRE to adjust the number of GCs (if it finds that the specific parameters of one or more technologies may lead to overcompensation) and approved by the Government apply to those producers that start the electricity generation after the entry into force of the relevant Government Decision, but no sooner than 1 January 2014 (for solar energy producers) or 1 January 2015 (for producers that use any other renewable energy source).
- The accreditation by ANRE of operators that develop renewable electricity plants with an installed power of more than 125 MW, after

they start production and delivery of electricity into the National Electricity System, if they have a connection agreement with the relevant network operator upon the entry into force of GEO No. 88/2011. Further to the accreditation, such operators will be granted the number of GCs corresponding to the relevant renewable source, for 24 months from the accreditation date. Operators that are thusly accredited, as well as producers which, upon the entry into force of GEO No. 88/2011, operate renewable electricity plants with an installed power of more than 125 MW, have the obligation to draw up the documentation required for the detailed assessment of the support measure by the European Commission and send it to the competent authorities, within 3 months from the date of the accreditation decision, under pain of not being granted the promotion system.

- The invoicing of the GC value, on the electricity invoice sent to consumers, separately from the electricity tariffs/prices, specifying the legal ground. Said value is the value of the mandatory annual quota of certificate acquisition estimated by ANRE multiplied by the invoiced amount of electricity and the average weighted price of the green certificates traded on the centralized market of green certificates in the most recent 3 completed months of trading, which price is published by OPCOM on a quarterly basis. Suppliers have the obligation to regulate the value of the GC, the electricity invoiced and the average weighted price of the used GCs by 1 September each year for the previous year.

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Insolvency

Name of the court decision	The High Court of Cassation and Justice passed Decision No. 6/2012 on the judgment of the final appeal in the interest of law forming the object of Case No. 6/2012 (the "**Decision**)
Publication	Official Gazette of Romania, Part I, No. 411 of 20 June 2012
Connections with other enactments	• Insolvency Law No. 85/2006, republished, as amended and supplemented ("**Law No. 85/2006**"); • Government Ordinance No. 92/2003 concerning the Fiscal Procedure Code, republished, as amended and supplemented (the "**Fiscal Procedure Code**").

Main provisions

The question of law which generated a non-unitary practice of the courts concerned the interpretation and enforcement of Article 142 (1) of Law No. 85/2006, by reference to Article 136 (6) of the Fiscal Procedure Code, with respect to the competence of the court bailiff or the fiscal body to enforce the judgment ordering the entailment of the liability of the members of the managing bodies, under the provisions of Chapter IV of Law No. 85/2006, for tax claims, as well.

To this end, some courts of law held that, as to the judgments entailing the liability of the members of the managing bodies, under the provisions of Chapter IV of Law No. 85/2006, the jurisdiction over the enforcement thereof lies with the court bailiff, and the enforcement shall be compliant with the Civil Procedure Code, even if the liability was entailed for tax claims.

In grounding this solution, the court basically held that the Insolvency Law and the Fiscal Procedure Code are both special laws, each with its own scope of regulation and, since the collective and concurrent procedure provided under Law No. 85/2006 is attended by all creditors, budgetary creditors included, it shall unconditionally fall under the provisions of this law.

In other words, according to the majority opinion whenever a judgment entailing liability, within the meaning of Article 138 of Law No. 85/2006, is to be enforced, it is applied the enforcement procedure provided by the Civil Procedure Code, as referenced by Article 142 of Law No. 85/2006, insofar as the insolvency procedure is collective, concurrent, unitary and fair to all the creditors involved.

However, other courts held that, in the case of judgments entailing the liability of the members of the managing bodies, in compliance with Article 138 of Law No. 85/2006, the jurisdiction over enforcement falls with the tax enforcement body, as per the Fiscal Procedure Code, as the court of law may not breach the legal provisions insofar as the lawmaker intended to derogate, during the enforcement of the claims due to the State budget, from the general provisions on the enforcement of the decision issued by the syndic judge.

In grounding its judgment, the High Court of Cassation and Justice stated that when the insolvent debtor's assets are not sufficient to cover the amount of liabilities and the motion for establishing the liability on the part of the managing bodies or the supervisory bodies of the debtor undergoing insolvency, according to Article 138 of Law No. 85/2006, the creditors are entitled to personally seize the assets of that individual on account of the claims due by the latter.

As a general rule, according to Article 142 (1) of the Civil Procedure Code, the

enforcement against the individuals mentioned at Article 138 of Law No. 85/2006 is being performed by the court bailiff, in accordance with the provisions of the Civil Procedure Code. The High Court of Cassation and Justice held that paragraph (6) of Article 136 of the Fiscal Procedure Code established a rule derogating from the provisions of Article 142 (1) of Law No. 85/2006, so that, if the liability of the members of the managing bodies is entailed according to law, as per Chapter IV of Law no. 85/2006, by derogation from the provisions of Article 142 of the same enactment, the enforcement shall be performed by the enforcement body, in compliance with the Fiscal Procedure Code.

The derogation provided by Article 136 (6) of the Fiscal Procedure Code extends over all creditor categories, so that, if the enforcement is initiated against the same income or assets belonging to the debtor, such enforcement shall be performed in accordance with the provisions of the Fiscal Procedure Code by the relevant bodies provided therein.

For these reasons, the High Court of Cassation and Justice decided that, in construing and enforcing the provisions of Article 142 (1) of Law No. 85/2006, by reference to Article 136 (6) of the Fiscal Procedure Code, the enforcement of judgments entailing the liability of the managing bodies or the supervisory bodies as per Article 138 of Law No. 85/2006 shall be performed, in case of concurrence between fiscal creditors and the other creditors of the debtor, in accordance with the Fiscal Procedure Code.

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Financial Services

Name of enactment	National Bank of Romania Regulation No. 9/2012 (the "**Regulation**") on the procedure relating to resolution of disputes between the users of payment services and the providers of such services, applied by the National Bank of Romania
Publication	Official Gazette of Romania, Part I, No. 408 of 19 June 2012
Entry into force	19 June 2012
Connections with other enactments	• Government Emergency Ordinance No. 113/2009 on payment services, as amended by Law No. 197/2010; • Law No. 127/2011 on the activity of issuing electronic money; • Government Decision No. 1259/2010 establishing measures for implementing Regulation (EC) No. 924/2009 of the European

Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001;

- Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001;
- Law No. 312/2004 on the Statute of the National Bank of Romania ("**NBR**").

Main provisions

Object and scope

The NBR Regulation establishes the procedure relating to resolution, by NBR, of the complaints submitted by the users of payment services with respect to an ongoing dispute with the provider of the payment services.

The dispute resolution procedure provided by the Regulation:

- Is to be used by any user of payment services (user-plaintiff) that deems himself prejudiced by its services provider (provider-defendant) operating on the Romanian territory;
- Applies solely to the complaints relating to the disputes arising from the breach by the provider-defendant of the user-plaintiff's rights resulting from the laws applicable in the field of payment services;

Implications of the facultative nature of the procedure

Taking into account the facultative nature of the procedure:

- The users-plaintiffs may still take one of the following measures:
  - Notify the National Authority for Consumer Protection;
  - Take legal actions against the providers of payment services;
  - Turn to other forms of out-of-court dispute resolution.
- Even if the users-plaintiffs took one of the first two measures previously mentioned they can notify NBR, as long as a final and irrevocable decision has not been issued.

Dispute resolution procedure

According to the Regulation, the dispute resolution procedure shall be preceded by a **preliminary resolution procedure** within which the user-plaintiff submits a

written request to the provider-defendant. The user-plaintiff may initiate the dispute resolution procedure applied by NBR only if, following the preliminary procedure:

- The user-plaintiff considers the reply received as unsatisfactory; or
- The provider-defendant fails to reply to the request filed by the user-plaintiff within 30 days.

Under the Regulation, the dispute resolution procedure shall be **written;** i.e. the complaint about the dispute between the user-plaintiff and the provider-defendant is being made in writing and sent to the NBR, in compliance with the content provided therein.

The parties shall be summoned only if NBR considers that certain aspects of the dispute with which it was vested may be clarified in this manner. If, on the occasion of the summoning, the parties involved in the dispute reach an agreement, the user-plaintiff shall withdraw its complaint by means of a written claim.

The complaint filed by the user-plaintiff remains without object if, before a solution being issued, the user-plaintiff notifies NBR that one of the following events has occurred:

- The parties have reached an agreement in this matter, regardless of the procedure performed by NBR;
- The relevant court issued a final and irrevocable judgment in this matter;
- The parties have agreed to a solution issued in another out-of-court procedure.

After receiving the complaint, NBR shall take the following **measures**:

- Checks whether it has jurisdiction over the dispute resolution and may reject the motion in the cases expressly provided by the Regulation, as the case may be;
- Serves a written notice on the provider-defendant with respect to the complaint received and requests the latter to express a standpoint on the arguments and claims raised by the user-plaintiff. Provider-defendant shall reply to the NBR's notice within 10 calendar days as of the receipt thereof;

- Requests documents and/or additional information from the parties involved, if those already submitted prove to be insufficient;
- If it deems fit, summons the parties to clarify certain aspects of the dispute;
- Informs the user-plaintiff, prior to the solution being passed, about the provider-defendant's reply.

The solution given by NBR

NBR gives a solution with respect to the dispute it was vested with under the Regulation, within 30 days from submission of the complaint (or, as the case may be, from the receipt, by NBR, of any additional information requested in the course of the procedure).

NBR's solution to this type of disputes:

- Is not mandatory to the parties (by an agreement concluded in writing, they can establish that the solution is imperative or may refer the dispute to the relevant court);
- May not be challenged by the Board of Directors of the NBR;
- Is not subject to means of appeal in court.

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Healthcare

Name of the enactment	Government Emergency Ordinance No. 35/2012 amending and supplementing various healthcare-related enactments ("**GEO No. 35/2012**")
Publication	Official Gazette of Romania, Part I, No. 434 of 30 June 2012
Entry into force	30 June 2012
Connections with other enactments	• Law No. 95/2006 on healthcare reform; • Government Ordinance No. 70/2002 on the management of public healthcare units at county and local level ("**GO No. 70/2002**").
Main provisions	GEO No. 35/2012 regulates a set of new provisions applicable in relation to the transplantation of organs, tissues and cells of human origin, the public healthcare system, the national health insurance card, and the marketing authorization and pharmacovigilance requirements in the field of pharmaceuticals. Most newly enacted legal provisions are meant to transpose into national law the provisions

of European enactments, i.e. Directive 2010/53/EU on standards of quality and safety of organs intended for transplantation and Directive 2010/84/EU amending, as regards pharmacovigilance, Directive 2001/83/EC.

According to the preamble of said enactment, the new provisions were established as a matter of urgency in order to transpose the provisions of the aforementioned European directives within the time-frame, i.e. the necessity to introduce as quickly as possible the national health card, respectively to ensure permanent medical care for the population, in multifunctional health centres.

As regards the transplantation of organs, tissues and cells of human origin, GEO No. 35/2012 implements significant supplements to the insufficient provisions of Law No. 95/2006, as follows:

- It sets out the fundamental principle that donation and transplantation of organs, tissues and cells of human origin shall be made for therapeutic purposes, ensuring quality and safety standards so as to guarantee a high level of health protection;
- Essential terms are defined, such as accreditation, competent authority, severe adverse reaction, traceability, tissue and organ bank, harvesting centre and transplantation centre, operational procedures, etc.;
- It sets out that the competent authorities in transplantation-related activities are the National Transplantation Agency and the Ministry of Health, by its healthcare control body;
- Clear rules and competencies are set out for accrediting public or private healthcare units, conditions on harvesting, donation, bringing in or taking out of the country of organs, tissue and cells, including stem cells and financing sources for the related costs.

As regards **the national health insurance card**, the following are provided, *inter alia:*

- The documents attesting to the capacity of insured person are, as the case may be, the insurance certificate or the document resulting further to healthcare services suppliers having accessed the electronic tool provided by NHIH (National Health Insurance House). After the implementation of new provisions under title IX of Law No. 95/2006, such supporting documents shall be replaced by the national health

insurance card;

- The date from which the national health insurance card shall be used is determined by Government decision, and the expenses related to the issuance of the card shall be borne by the budget of the Ministry of Health;
- Cards shall be distributed to insured persons by the health insurance houses through primary healthcare services providers.

As regards medicinal products for human use, GEO No. 35/2012 amends Title XVII of Law No. 95/2006, establishing new rules and requirements related to the marketing authorization and pharmacovigilance, in accordance with European legislation. Within this meaning, we should like to list the following:

- Additional requirements are introduced as regards documents and information which must accompany the marketing authorization application, in relation to pharmacovigilance, for instance elements provided in the summary of the applicant's pharmacovigilance system or the risk management plan;
- Details concerning special cases in which the marketing authorization ("MA") may be issued subject to the fulfilment of one or several conditions or obligations by the applicant;
- It provides the right of the National Agency for Medicines and Medical Devices ("NAMMD") to compel the holder of the MA, after the issuance thereof, to carry out post-authorization safety or efficiency studies;
- The term for filing the relevant documents with NAMMD in order to renew the MA is extended from 6 to 9 months; such documents now include the assessment of the data in the reports on suspected adverse reactions and updated periodic safety reports;
- A pharmacovigilance system shall be organized in NAMMD to fulfil pharmacovigilance-related duties and to participate in pharmacovigilance activities of the European Union; furthermore, the MA holder must implement a pharmacovigilance system with a view to fulfilling its duties pertaining to pharmacovigilance, equivalent to NAMMD's pharmacovigilance system mentioned above;
- MA holders must record all suspected adverse reactions in the

European Union or in third countries. The information on suspected serious adverse reactions must be reported electronically to the MA holder, to the data base and the data processing network mentioned at Article 24 of (EC) Regulation No. 726/2004 (EudraVigilance database); by the time when the European Medicines Agency may ensure the functionality of EudraVigilance database, MA holders shall report to NAMMD all suspected serious adverse reactions occurring in Romania;

- It regulates the emergency procedure at European Union level, applicable in case the competent authority, i.e. NAMMD, intends to suspend or withdraw a MA, to prohibit the supply of a medicinal product or to refuse the renewal of a MA, or if it is informed by the MA holder that marketing is ceased due to safety concerns.

Last but not least, GEO No. 35/2012 regulates the conditions concerning the establishment, closure, organization, operation and financing of **multifunctional health centres**, with or without legal personality.

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Mediation and the Organization of the Mediation Profession

Name of enactment	Law No. 115/2012 amending and supplementing Law No. 192/2006 on mediation and organizing the mediation profession ("**Law 115/2012**")
Publication	Official Gazette of Romania, Part I, No. 462 of 9 July 2012
Entry into force	1 October 2012, except for Article 60[1], which enters into force on 9 January 2013
Connections with other enactments	• Law No. 192/2006 on mediation and organizing the mediation profession ("**Mediation Law**"); • The Civil Procedure Code of Romania to enter into force on 1 September 2012, as republished in the Official Gazette of Romania No. 545 of 3 August 2012 ("**New Civil Procedure Code**"); • Law No. 115/2012 amending and supplementing the Mediation Law was adopted in supplementation of the provisions of the New Civil Procedure Code that contain certain mediation-related amendments.
Main provisions	More to the point, Law 115/2012 provides for the parties' obligation to participate in the mediation information meeting, including after a trial before the

competent courts has been started, for the purpose of settling conflicts in the following fields by mediation:

- Family law in the cases expressly provided for by law;
- Litigations concerning neighbour relations (possession, establishing borders, moving borders, etc.);
- Disputes on professional liability if the special law does not provide for a different procedure;
- Civil litigations of less than RON 50,000, except for cases exempted by law;
- Work litigations;
- The offenses for which the criminal proceedings are launched upon the preliminary complaint, subject to the observance of certain requirements expressly provided for.

In this context, please note that, unlike the currently applicable provisions, the New Civil Procedure Code distinguishes between the cases where the judge invites the parties to mediation and the cases where the judge recommends the mediation to the parties. In the latter case, the parties have the obligation to go to the mediator, in order to be informed on the advantages of the mediation, following which they will decide whether they wish to settle the dispute between them by mediation or not.

In all cases where the participation to the mediation information meeting is mandatory, the proof of the parties' participation is the mediator's report on the outcome of the informative meeting. Under no circumstances may the mediator ask for payment of a fee for the parties' information meeting.

With regard to the requirements that need to be complied with in order to acquire the capacity of mediator, Law 115/2012 contains a clarification as it expressly provides for the need to comply with the cumulative requirements provided under Article 7 letters (a)-(g). Also, there are several new provisions regarding the structure and operation of the Mediation Board.

According to the Mediation Law, as amended, in case of a mediated conflict regarding the transfer of the ownership over immovable assets, as well as in the case of other rights *in rem*, partitions and succession cases, under pain of absolute nullity, the mediation agreement has to be provided to the notary public or to the court, which will assess the compliance thereof with the content and form

requirements and which will subsequently issue an authentic deed or a court order. In such cases, the court of law and the notary may amend and supplement the mediation agreement with the parties' consent in this respect. Such provisions will also be applicable if the mediation agreement establishes amends or extinguishes an immovable right *in rem*.

As at present, the parties may request the authentication of the mediation agreement or the issuance by the court of a decision sanctioning their agreement; the new law also contains provisions on the competence and jurisdiction of the courts of law.

Upon the completion of the mediation procedure, the mediator has the obligation to provide the court of law with the mediation report, as well as with the mediation agreement if the parties reach an agreement, both in original and electronic format.

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Personal Data Protection

1 Electronic Communications

Name of enactment

Law on retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks, and amending and supplementing Law No. 506/2004 on the personal data processing and protection of privacy in electronic communications ("Law No. 82/2012").

Publication

Official Gazette of Romania, Part I, No. 406 of 18 June 2012.

Entry into force

Law No. 82/2012 came into force on 21 June 2012. By way of exception, the provisions of Article 12 (3) and Article 16 paragraphs (3) through (8) shall come into force within 90 days and the provisions of Article 21 (1) letters a) and e), within 6 months after the publication of the law in the Official Gazette of Romania.

Connections with other enactments

- Law No. 506/2004 on personal data processing and protection of privacy in the electronic communications ("Law No. 82/2012");
- Law No. 677/2004 on persons' protection regarding the personal data processing and the free circulation thereof;
- Law No. 365/2002 on electronic commerce;
- Law No. 39/2003 on preventing and combating organized crime;

- Law No. 535/2004 on preventing and combating terrorism;
- Law No. 78/2000 on preventing, finding and punishing acts of corruption;
- Law No. 161/2003 on certain steps designed to secure transparency in the exercise of the duties of publicly-appointed office holders, public positions and in the business environment, and, prevent and punish corruption;
- Law No. 241/2005 on preventing and combating tax evasion;
- Law No. 678/2001 on preventing and combating human trafficking;
- Criminal Code and Criminal Procedure Code.

Connections with EU legislation

Directive 2006/24/EC concerning the obligation of the providers of communications services to secure the creation of databases ("**Directive 2006/24/EC**").

Main provisions

Law No. 82/2012 is based on European Directive 2006/24/CE enacted in 2006, according to which the providers of publicly available electronic communications services or by public communications networks must see to the creation of some databases in which the data is to be stored for a time period from 6 to 24 months and made available for the purpose of prevention, investigation, detection and prosecution of criminal offences and, in particular, of organized crime.

The law applies to the data consisting of information on the traffic, location, as well as of the information required for identifying a subscriber or a user. The content of the communication is not detailed under this law, these cases falling within the scope of the Criminal Procedure Code.

- **Provisions relating to data retention**

Suppliers of public communications networks or publicly available electronic communications services shall secure, at their own cost, the creation and management of the databases to store the categories of data provided under the law. The expenses incurred with the databases are tax-deductible.

The law requires that the following data be retained: (i) data necessary to identify the communication source, (ii) data necessary to identify the destination of a communication, (iii) data necessary to identify the time, date and duration of the communication, (vi) data necessary to identify the communication type, (v) data necessary to identify the communication equipment of the user or of the devices

used as equipment by the user, (vi) data necessary to identify the location of the mobile communication equipment.

The suppliers shall also retain the data laid down by the law in the cases of unsuccessful calls, namely connected phone calls which remained unanswered or underwent an intervention from the network administrator. Nevertheless, the obligation does not remain valid in the case of missed calls.

Furthermore, the suppliers may retain, in addition to the data provided under the law, other data pertaining to their business, such as invoicing data or other data processed at the request of customers, for commercial purposes or for provision of services.

The obligation to store the previously mentioned data stays valid for 6 months after the communication date. At the expiry of the 6 months, all the retained data, with the exception of those accessed under the law, shall be destroyed by means of irreversible procedures.

- **Provisions on the obligation to transfer the data**

The law provides for the obligation to transfer the data to the prosecution bodies, courts of law or to the state bodies authorized to operate in the field of national security, within no more than 48 hours from the date of the request.

The request shall mention the existing legal ground. The data shall be transmitted via electronic data transfer, the electronic signature being required.

If the transfer is not possible, providers shall notify the requesting party as to the reasons for the delay. In any case, the data requested shall be transferred within no more than 5 days from the initial request.

The requests for data transfer may be submitted by the investigation bodies of the judicial police, only with the approval from the prosecutor supervising or carrying out the criminal investigation and from the competent judge.

The judge shall rule on the prosecutor's request within 48 hours, by a grounded resolution issued in chambers.

If a decision not to prosecute, to release from criminal investigation, to terminate the criminal investigation or to close the case is issued, the support on which the data is stored shall be kept in confidence, at the prosecutor's office, until the statute of limitations for the criminal offense making the object of the case expires.

- **Control of compliance with the legal provisions and applicable sanctions**

The jurisdiction over the control and application of sanctions for misdemeanours provided by law is divided between the National Supervisory Authority for Personal Data Processing and the National Authority for Management and Regulation in the Communications of Romania. Failure to comply with the obligations to retain and communicate data is deemed misdemeanour, being punishable by a fine ranging between RON 2,500 and RON 500,000.

Criminal liability is entailed in the case of deliberate and unauthorized access to, alteration or transfer of data, and is punishable by 1 to 5 years in prison. The attempt is punished.

- **Amendments brought to Law No. 506/2004**

To maximize the efficiency of the provisions of Law No. 82/2012 in the sense of securing the access of criminal investigation bodies, courts of law and state bodies authorized to operate in the field of national security to traffic data and geo-location data, Law No. 506/2004, which provides a general legal framework for the protection of personal data in the electronic communications, underwent certain amendments.

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2 Video Surveillance Systems

Name of enactment	The decision of the chairman of the National Supervisory Authority for Personal Data Processing ("**ANSPDCP**") No. 52/2012 on the personal data processing by video surveillance systems ("**Decision No. 52/2012**")
Publication	Official Gazette of Romania, Part I, No. 389 of 11 June 2012
Entry into force	11 June 2012
Connections with other enactments	Law No. 677/2001 for the Protection of Persons concerning the Processing of Personal Data and Free Circulation thereof ("Law No. 677/2001")
Main provisions	Decision No. 52/2012 details the way and conditions in which the personal data is being processed by video surveillance systems, thus supplementing the general provisions of Law No. 677/2001. According to Decision No. 52/2012, the personal data processing by video surveillance systems shall be compliant with the general provisions of Article 4 of Law No. 677/2001, which establishes the features of the personal data that is to be processed. Furthermore, as a general rule, the relevant

party must expressly and unequivocally consent to the processing of such data, except for the cases provided under Article 5 (2) of Law No. 677/2001, in which such consent is not necessary.

Scope of the Decision

The scope of Decision No. 52/2012 is subject to certain limitations, in the sense that it does not apply to the following personal data processing by video surveillance systems:

- The processing of personal data performed as part of the activities carried out in the field of national defence and national security, within the limits and restrictions provided under the law;
- The processing performed by individuals for their sole benefit, if said data is not meant to be disclosed.

Purposes for which video surveillance systems may be used

The processing of personal data by video surveillance systems may be performed for the following purposes:

- Prevention of and fight against crime;
- Traffic monitoring and identifying breaches of traffic regulations;
- Security and protection of persons, assets and valuables, immovable assets and public utility machinery and their neighbouring enclosures;
- Taking some measures in the public interest or measures for exercising the prerogatives of public authority;
- Exercise of some legitimate interests, provided that the fundamental rights and freedoms or the interests of the relevant parties are not damaged.

The main obligations incumbent on data controllers processing personal data by video surveillance systems

- To notify, specifically and permanently, the relevant persons on the information provided under Article 12 (1) of Law No. 677/2001, including with respect to the existence of the video surveillance system and the purpose for which such data is being processed by such means, the existence of the footage, etc.;
- To take the security measures of technical and organizational nature

meant to protect the personal data under the provisions of arts. 19 and 20 of Law no. 677/2001;

- To notify ANSPDCP about the processing of personal data by video surveillance systems as well as about their transfer to a third party state, prior to processing, unless such data falls under the scope of the decisions issued by the ANSPDCP's chairman on cases in which the notification is not required.

Processing of personal data in the case of employees and minors

According to Decision No. 52/2012, in the case of employees, the data processing is allowed under the following circumstances: (i) if performed as part of an express legal obligation or in light of a legitimate interest or, if the requirements for the applicability of the aforementioned situations are not met, (ii) based on the express and free consent of the employees, in both cases with the observance of their rights, in particular of the right to be notified in advance. Moreover, Decision No. 52/2012 prohibits the processing of employees' personal data by video surveillance in the offices where they carry out their activity in the workplace, with the exception of the cases expressly provided under the law or ANSPDCP's endorsement. Minors' personal data processing by video surveillance is permitted in the following cases: (i) based on the express consent of the legal representative or (ii) in the situations provided under Article 5 (2) of Law No. 677/2001, when the consent of the party concerned is not required, in both cases in compliance with their rights, in particular with the right to be notified in advance.

Storage duration

The storage duration of the data obtained through the video surveillance system shall not exceed 30 days, unless expressly provided under the law or based on duly justified grounds. Upon the expiry of this term, the footage shall be destroyed or erased, as the case may be, depending on the support on which the controller has stored same.

Final provisions

Within 60 days from the entry into force of Decision No. 52/2012, the controllers of personal data listed therein shall take the necessary actions to secure compliance with the provisions thereof.

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Public Administration

Name of enactment	Government Emergency Ordinance No. 26/2012 on certain measures aimed at reducing public expenditure, consolidating financial discipline and amending and supplementing some enactments ("**GEO No. 26/2012**")
Publication	Official Gazette of Romania, Part I, No. 392 of 12 June 2012
Entry into force	12 June 2012
Connections with other enactments	• Law No. 672/2002 on public internal audit; • Government Emergency Ordinance No. 64/2009 on the financial management of structural instruments and use thereof for the convergence objective; • Government Emergency Ordinance No. 66/2011 on preventing, finding and sanctioning irregularities occurred when obtaining and using European funds and/or national public funds related thereto.
Main provisions	According to the explanatory memorandum, GEO No. 26/2012 was passed with a view to securing a prudent, restrictive and balanced budgetary execution as well as the judicious use of public funds. Thus, this law provides for certain measures aimed at reducing public expenditure and consolidating financial discipline, such as reduction of protocol expenses, limiting the acquisition of certain assets, restraining the conclusion of agreements on certain types of services, limiting the expenses incurred with feasibility studies, interdiction to contract holiday vouchers for 2012, etc. Nevertheless, GEO 26/2012 brought some amendments with respect to: • Repeal of the provisions related to the services agreement within Law No. 672/2002 on public internal audit. Nevertheless, the services agreements aimed at securing the performance of the internal audit, valid as of the entry into force of GEO No. 26/2012, shall remain in full force and effect under the conditions in which same were concluded; • The amendment of certain enactments concerning the State budget financing, the use of income of various public authorities and institutions, and the body authorized to approve the income and expense budgets for such authorities; Furthermore, GEO No. 26/2012 amends and supplements Government Emergency Ordinance No. 64/2009 on the financial management of the structural

instruments and the use thereof for the convergence objective, which amendment concerns the amounts repaid to Romania under Regulation (EC) No. 1311/2011 of the European Parliament amending Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund for increasing the capacity of structural funds absorption.

In addition, amendments were brought to Government Emergency Ordinance No. 66/2011 on preventing, finding and sanctioning irregularities occurred when obtaining and using EU funds and/or national public funds related thereto, in light of the irregularities found by the Court of Accounts with respect to certain areas of use of public funds, and of the recommendations made by this institution.

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Real Estate

Name of enactment	Law No. 133/2012 approving Government Emergency Ordinance No. 64/2010 amending and supplementing Cadastre and Land Registration Law No. 7/1996 ("**Law No. 133/2012**")
Publication	Official Gazette of Romania, Part I, No. 506 of 24 July 2012
Entry into force	27 July 2012
Connections with other enactments	• Cadastre and Land Registration Law No. 7/1996 ("**Law No. 7/1996**"); • Government Emergency Ordinance No. 64/2010 amending and supplementing Cadastre and Land Registration Law No. 7/1996 ("**G.E.O. No. 64/2010**"); • Law No. 50/1991 on authorization of construction works ("**Law No. 50/1991**"); • Law No. 287/2009 on the Civil Code (the "**Civil Code**").
Main provisions	Law No. 133/2012 approves GEO No. 64/2010, as amended and supplemented, which brings significant variations to Law No. 7/1996, mainly intended to simplify the property registration procedures. Law No. 133/2012 improves and clarifies several issues related to the amendments brought by GEO No. 64/2010. Firstly, it is expressly provided that one of the purposes of the cadastre and land book system is to ensure the registration of real rights, personal rights, legal acts and deeds, and any other legal relationships, with the land book, thus ensuring that the registration of the same is binding to any third party.

Also, the legal concept of "immovable asset" which is subject to registration in the land book is redefined as follows: land, with or without constructions, under the jurisdiction of a local authority (in Romanian, „*unitate administrativ-teritorială*"), owned by one or several owners, identified with a single cadastral number. The basic entities of the land book system are the immovable asset and the owner.

New provisions are inserted for the purpose of improving the cooperation relationships between the local authority, courts, public notaries and the National Agency for Cadastre and Land Registration (ANCPI), or, as the case may be, the local office thereof (in Romanian, „*oficiul teritorial*") (by appointing representatives in charge with such collaboration, executing cooperation protocols etc).

Supplementations are brought in respect of the access to information registered in the integrated cadastre and land book system. Thus, the integrated cadastre and land book system data base may be consulted in relation to the status of an immovable asset registered therein by any interested person, using the identification details of the immovable asset. The applications for registration and information may also be filed electronically, being registered and processed with the same legal effects.

The National Electronic Register of Street Nomenclature was reconsidered as sole reference system at national level which shall be used on a mandatory basis by the institutions and authorities of the public administration, and by the notaries public, free of charge. The novelty in this respect is that any variation to the administrative address of the immovable asset shall be registered with the Land Book.

In addition, the National Program of Registration of Real Properties is replaced by the National Cadastre and Land Book Program, implemented to issue certificates necessary for the registration with the land book of the holders, as owners, and the registration of the succession debates, if any, drafting of cadastral documentation and free-of-charge registration of the immovable assets with the integrated cadastre and land book system.

One of the major amendments brought by Law No. 133/2012 is that it regulates the organization of the systematic cadastre works for the registration with the land book, and it will be supplemented thereafter by detailed regulations approved under subsequent enactments. The new procedure involves new stages of the registration with the Land Book (the person authorized to perform the

cadastre works will integrate all technical and legal information collected from the local office; public authorities and institutions or other individuals or legal entities, will update the information collected on-site with that from isolated registration and draft the cadastral technical documents; the notary public will issue the certificates necessary for the registration of the holders as owners with the land book etc.). On the occasion of the cadastral technical measurements carried out at the level of cadastral sectors, it was provided for the possibility to rectify the graphic representation of the immovable assets without the owners' consent, given that such works record the reality on site. On the occasion of the systematic registration works, the compensation of areas, the material errors and the errors of location of the immovable assets for which ownership titles were issued according to land restitution laws may occur and, respectively, be rectified, with the owner's consent, given in writing, executed in authentic form before the notary public, in consideration of the state of facts and based on the land division plan amended by the person authorized to perform cadastre works.

Another major amendment concerns the registration of a holder of an immovable asset as owner of the same, based on the certification procedure carried out by the notary public, at the request of the local office. Based on such certificate, the holder is registered as owner with the land book. If the holder's right is challenged or the notary public refuses to issue the certificate, then the *de facto* possession shall be registered in favour of the holder. In this case, the ownership right may be registered thereafter, *ex officio*, upon the expiry of a 5-year term following the registration with the land book, unless no dispute was registered, which may challenge the land book registrations; or, upon request, on the basis of the ownership document, the certificate issued by the notary (after the expiry of the term for the settlement of challenges regarding a holder, or the rectification applications, submitted to the court) or pursuant to a final and irrevocable judgment. In case of immovable assets in respect of which the owners or other holders cannot be identified on the occasion of the cadastre works performed *ex officio*, the ownership right shall be temporarily registered in favour of the local authority, and may be registered with the land book thereafter, upon request. Such provisions are not applicable to the immovable assets owned by the state or the local authority, which are registered based on the legal documents, as provided by law.

The registration with the land book shall be performed *ex officio*, after completion of the cadastre works for each cadastral sector and the expiry of the term for the settlement of the applications for rectification of the cadastral

technical documents, according to regulations approved by order of the managing director of the National Agency for Cadastre and Land Registration. For the immovable assets registered with the land book further to completion of the systematic registration works of the respective local authority, the ownership right shall be attested by the land book excerpt. The delimitation of an immovable asset from other immovable assets shall be attested only by an excerpt of the cadastral plan.

Other supplementations to land book operations also include redefining the operation of division of a condominium building in several individual units, referred to as dismemberment.

There is a novelty also in respect of the deregistration of the mortgage right, performed according to Article 885 (2) of the Civil Code, except for the mortgages established in favour of the central and local public administration authorities, which may be deregistered subject to the holder's consent given in the form of an official writ issued by the relevant institution, bearing the signature of the leader of such institution or the person delegated thereby, the number and date of the registration.

As to the authentication formalities involving documents whereby a real right is transferred, varied, created or extinguished, the provision stipulating that a new land book excerpt for authentication purposes can only be applied for after 3 business days following the expiry of the validity of the previously released excerpt was abrogated.

By 31 December 2020, the receipt of cadastral documentation, opening of land books (inclusively by the holders of the liens registered with the registers of transcriptions and inscriptions), shall be performed free of charge.

Further to such amendments, Law No. 7/1996 shall be republished in the Official Gazette of Romania, Part I, and the texts shall be renumbered.

By Law No. 133/2012, also Article 23 of Law No. 50/1991 was amended, in the sense that the lands designed for building and included in the *intra muros* area (in Romanian, „*intravilan*"), shall be definitively removed from the agricultural use by means of the construction permit. If the owner wishes to remove only part of the owned land from the agricultural use, then to fulfil such procedure, the building permit will be accompanied by the cadastral technical documentation.

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Taxation

Name of enactment	Government Decision no. 670/2012 („GD 670/2012") has brought amendments and modifications to the Norms for the application of the Fiscal Code.
Publication	Official Gazette of Romania, no. 481/13.07.2012
Entry into force	13 July 2012
Connections with other enactments	• Fiscal Code („**Law no. 571/2003**"); • Norms for the application of the Fiscal Code („**G.D. no. 44/2004**");
Main provisions	**Profit Tax** • Are specified as being expenses incurred for the purpose of generating taxable income, expenses related to the write-off of bad debts, as a result of the implementation of a reorganization plan accepted and confirmed by a Court hearing, in accordance with the insolvency law; • Clarifications have been made in relation to the concept of "credit institutions" from which receivables are taken over for the purpose of recovering them, for the application of art. 22, (1), letter m) of the Fiscal Code, introduced by Government Ordinance No. 24/2012; • The Government Decision 670/2012 bring also clarifications on the condition of being include in the taxable income by fulfilling it for being granted with tax deduction of the provisions relating to transferred receivables, if the transferee records as income the difference between the nominal value of the receivable taken over and the amount to pay to the transferor, in accordance with the accounting provisions (i.e. Order No. 3055/2009); • Expenses related to motor vehicles which are subject to the 50% deductibility limitation, means the expenses which are directly attributable to a vehicle, including those recorded under a leasing contract, such as: local taxes, compulsory civil liability insurance for cars, periodic technical inspections, road fund tax, rent, the non-deductible part of VAT, interest, commissions, foreign exchange differences etc. Are also subject to the deductibility limitation, expenses related to the VAT for which the deductibility right has not been granted; • In order to benefit from full deductibility when calculating the taxable

profit, the justification of the use of vehicles must be based on supporting documents and on the preparation of the vehicle's logbook, which must contain at least the following information: the category of vehicle used, the number of kilometres travelled, purpose and location of travel as well as the vehicle's average fuel consumption per kilometre.

Income Tax

- 50% deductibility limitation of expenses related to motorized vehicles for the purpose determining the net annual income from independent activities will apply to all expenses directly attributable to each vehicle, including to those representing local taxes, compulsory civil liability insurance for cars, periodical technical inspections, road fund tax etc. Full deductibility is allowed only on the basis of justifying documents and travel logs.

Withholding Tax

- In order to apply the provisions of the double tax treaties in case of capital gains from the transfer of securities for unlisted companies and from transfer of shares, the non-resident beneficiary of income derived from Romania must submit the tax residence certificate to the fiscal representative / empowered person in Romania for fulfilling the declarative and tax obligations. A legalized copy of the tax residence certificate accompanied by a translation into Romanian must be submitted also to the company whose securities / shares are transferred.

Value-Added Tax

- The Government Decision clarifies the expenses for vehicles that are owned or used by a taxable person, which includes the expenses directly assigned to a vehicle, such as repairs, maintenance, lubricants, spare parts or fuel used for the functioning of the vehicle;
- Clarifications have been brought with respect to the use of a vehicle to for economic activities which includes transport in and outside Romania to clients/suppliers, market research, transportation to and/or from places of work, banks, customs offices, post offices, tax offices, use by personnel in management positions to do their job, journeys for the purpose of servicing and repairs, or use of vehicles for test-drive by

car dealers;

- The VAT related to the vehicles that are used exclusively for the purpose of performing economic activities may be fully deducted as long as the taxable person holds the justifying documents required by law and also prepares travel logs;
- Are not required to prepare travel logs the taxable persons that apply the 50% limitation on the right to deduct VAT;
- The Government Decision provides also the rules for VAT registration and the VAT adjustments to be made when changing the tax regime.

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