

# Legal Bulletin

October 2010

<b>Civil Procedure</b>	<b>1</b>
<b>Organization and Operation of the Constitutional Court</b>	<b>2</b>
<b>Company Law</b>	<b>3</b>
<b>Competition Law</b>	<b>5</b>
<b>Employment and Social Security Law</b>	<b>7</b>
<b>Financial Services</b>	<b>9</b>
<b>Public Procurement, Concessions, Public Private Partnership</b>	<b>11</b>

October 2010

# Legal Bulletin

## Civil Procedure

Name of the enactment	Law No. 202/2010 on certain measures to expedite the settlement of trials
Publication	Official Gazette of Romania, Part I, No. 714 of 26 October 2010
Entry into force	<ul style="list-style-type: none"><li>• 25 November 2010;</li><li>• 25 December 2010 for the provisions on the divorce by administrative or notary public offices.</li></ul>
Main provisions	<p>The purpose of the law is to amend the Civil Procedure Code, the Criminal Procedure Code and certain special laws aimed at expediting the dispute settlement. In addition, the new regulations on the final appeal in the interest of law are intended to render this procedure more flexible, as it is a major instrument in establishing a unitary case-law.</p> <p>The most important amendments brought in the area of the civil procedure are the following:</p> <p><b>1 Amendments of the Civil Procedure Code:</b></p> <ul style="list-style-type: none"><li>• District courts judging in first and last instance to settle cases on financial receivables lower than RON 2,000;</li><li>• The schedule of hearings (until the initiation of debates on the merits of the case) in which pleas of lack of jurisdiction may be submitted;</li><li>• Introduction of measures aiming to expedite the summoning proceedings (parties' possibility of serving summons; summoning by fax, electronic mail or other means of communication, etc.);</li><li>• Introduction of the presumption according to which the party duly summoned is aware of the term when the respective party attended the court hearings or received the summoning notice upon signature;</li><li>• Possibility to schedule court hearings from one day to the other;</li><li>• Possibility to waive a degree of jurisdiction should a court decision be cancelled and referred for judgment again;</li><li>• A case may be referred for judgment again only once;</li></ul>

- The extension of the territorial jurisdiction of court bailiffs and to simplify the enforcement approval proceedings;
- The interdiction of evacuation from housing estates between 1 December 2010 and 1 March 2011 (with certain exceptions);
- The recognition of the possibility of having recourse to mediation, as an alternative to the preliminary procedure of conciliation, before making a court claim of commercial nature.

**2 Amendments brought to certain other major enactments:**

- Family code: divorce by way of agreement between the parties may be passed by the court irrespective of the duration of the marriage and whether there are underage children involved; in certain conditions, divorce by way of agreement between the parties may be established by administrative channels (by the registrar) or by notary public offices;
- Law No. 304/2004 on judicial reorganization: cancellation of the 9-judge panel and establishment of 4 panels of 5 judges.

Author

[ionut.serban@tuca.ro](mailto:ionut.serban@tuca.ro)

## Organization and Operation of the Constitutional Court

Name of the enactment

Law No. 177/2010 amending and supplementing Law No. 47/1992 on the organization and operation of the Constitutional Court, Civil Procedure Code and Criminal Procedure Code

Publication

Official Gazette of Romania, Part I, No. 672 of 4 October 2010

Entry into force

7 October 2010

Main provisions

The law is primarily intended to repeal the provisions of Law No. 47/1992 on the *de jure* suspension of (civil and criminal) trials in which the courts ordered the case to be brought before the Constitutional Court for the settlement of certain pleas on unconstitutionality. Insofar as the Constitutional Court establishes the unconstitutionality of the provisions of law or ordinance of the Government which was brought before it, the party concerned (and the *de jure* subjects expressly provided by law, in case of criminal disputes) may resort to the mean of appeal of revision. The revision term shall be 3 months from the publication of the Constitutional Court's decision in the Official Gazette of Romania.

At the same time, the law clarifies certain provisions of Law No. 47/1992 distinctly

construed in practice: the range of Parliament's documents which may be brought before the Constitutional Court, the procedure of serving acts between courts and the Constitutional Court, etc.

Author

[ionut.serban@tuca.ro](mailto:ionut.serban@tuca.ro)

## Company Law

Name of the enactment

Emergency Ordinance No. 90/2010 amending and supplementing Law No. 31/1990 on business companies ("**GEO No. 90/2010**")

Publication

Official Gazette of Romania, Part I No. 674 of 4 October 2010

Entry into force

4 October 2010

Connections with other enactments

Law No. 31/1990 on business companies ("**Law No. 31/1990**")

Main provisions

The amendments brought to Law No. 31/1990 by GEO No. 90/2010 aim at two major levels: (i) submission and publication of annual financial statements and related documentation; and (ii) company merger and spin-off proceedings, respectively:

### 1 Submission and Publication of Financial Statements

While under the former regulation the board of directors or the management, as the case may be, had to submit the annual financial statements, their report and the report of censors/financial auditors to the relevant Trade Registry Office, according to the amendments brought by GEO No. 90/2010, the above documentation shall have to be submitted to the territorial units of the Ministry of Public Finance. The latter institution will then send electronically copies of these documents to the Trade Registry national Office. The same procedure shall be followed in the case of annual consolidated financial statements.

Publication of documentation's submission, as per the above, shall be made on a distinct basis, as per the annual turnover registered by the companies; thus, as the companies with an annual turnover exceeding RON 10 million are concerned, they shall have to publish in the Official Gazette of Romania, Part IV, at own expense, a note attesting to submission of the relevant documentation, while the companies with an annual turnover below RON 10 million shall publish the note on the website of the National Office of the Trade Registry for free access purposes.

### 2 Company Merger and Spin-off

The amendments brought by GEO No. 90/2010 mainly concern the legal regime

of opposition in merger/spin-off proceedings (amendments with a similar effect have also been operated with respect to cross-border mergers), as follows:

- Cancellation of the opposition's suspensive effect; according to the new regulation, filing an opposition to merger/spin-off does not stay the execution of the operations in question, nor it prohibits their performance;
- Amendment of the deadline in which the merger/spin-off in question has to be completed; according to the new regulation, each of the participating company shall have to decide on the merger or spin-off within maximum 3 months from the publication of the merger/spin-off project in the Official Gazette of Romania, Part IV;
- Express regulation of categories of creditors which may file an opposition; consequently, an opposition may be filed only by creditors holding receivables which are certain, liquid and prior to the publication of the merger/spin-off project, and not due on the publication date, and attempting to stop a prejudice which may occur by way of the merger/spin-off;
- A shorter term for filing the opposition; according to the new regulation, opposition shall be filed within 30 days from the publication of the merger or spin-off project in the Official Gazette of Romania, Part IV;
- Express regulation of the circumstances in which the courts vested to settle the opposition shall admit or dismiss, as the case may be, the opposition claim;
- Regulation of the creditors' special guarantee as the satisfaction of its receivable is concerned in case of spin-off; according to the new regulation, should a creditor fail to obtain satisfaction of its receivable from the company to which the receivable is distributed by way of the spin-off, all companies participating in the spin-off shall be liable for the debt in question, up to the amount of the net assets which were distributed to them by way of the spin-off, except for the company which was distributed such debt, which shall be unlimitedly liable.

Notably, the legal regime set for the opposition in merger/spin-off proceedings by GEO No. 90/2010 shall be applicable only to merger/spin-off operations for which the merger/spin-off project shall be published subsequent to the entry into force

of the above enactment (*i.e.* subsequent to 4 October 2010).

Author

[ciprian.timofte@tuca.ro](mailto:ciprian.timofte@tuca.ro)

## Competition Law

Name of the enactment

The regulation on finding and enforcing sanctions by the Competition Council ("**Regulation**"), enforced by Order of the Competition Council No. 519/2010

Publication

Official Gazette of Romania, Part I, No. 705 of 22 October 2010

Entry into force

22 October 2010

Connections with other enactments

- Competition Law No. 21/1996 ("**Competition Law**");
- Government Emergency Ordinance No. 117/2006 on the national procedures in the field of State aid ("**GEO No. 117/2006**").

Purpose

The regulation is intended to establish the procedures regarding the finding and enforcing of sanctions by the competition inspectors, committees of the Competition Council and Competition Council Plenum, should the provisions of Competition Law or GEO No. 117/2006 be found breached, and the fine payment fashion, payment-making follow-up and applicable means of appeal.

Main provisions

### **1 Misdemeanor Finding and Sanction Enforcing by the Competition Inspectors**

In case of perpetration of one of the misdemeanors provided under the Competition Law or GEO No. 117/2006, falling under the express jurisdiction of the competition inspectors (except for career entrants), for finding and sanctioning the deed, the latter shall prepare a minutes finding the misdemeanor and enforcing the sanction in the form established under the appendix to the Regulation. A counterpart of the minutes shall be handed over to the offender, and if the latter is not present or refuses to take it, the minutes shall be served on him (by mail or posting at the offender's headquarters/domicile) within maximum one month from conclusion.

Notably, the Regulation expressly provides the competition inspectors' obligation to inform the offender on his right to object to the deed finding and sanctioning the misdemeanor. They shall be recorded under "Other Notations", subject to the sanction of nullity of the minutes.

### **2 Misdemeanor Finding and Sanction Enforcing by the Committees of the Competition Council**

Finding and sanctioning the misdemeanors provided under the Competition Law

and GEO No. 117/2006 and falling under the jurisdiction of the committees of the Competition Council shall be accomplished by decisions which have to include at least the following items: (i) offender's identification data; (ii) description of the deed; (iii) specification of the breached legal provision; (iv) offender's standpoint on his deed; (v) enforced fine; (vi) payment term and fashion; (vii) challenge filing term; (viii) relevant court settling the challenge, and (ix) in the case of the misdemeanors provided under the Competition Law, sanction customization criteria, according to the instructions issued by the Competition Council.

The sanctioning decisions made by the committees of the Competition Council shall be submitted by mail with acknowledgment of receipt or by posting at the headquarters of the undertaking within 30 days from the issuance thereof.

### **3 Misdemeanor Finding and Sanction Enforcing by the Competition Council Plenum**

Finding of misdemeanors and enforcement of sanctions falling under the competence of the Competition Council Plenum shall be made by decisions which have to comply with the same mandatory items as in the case of the decisions made by the committees of the Competition Council. At the same time, the decisions made by the Competition Council Plenum shall be submitted by identical means as in the case of those made by the committees in observance of the same term.

### **4 Payment of Fees and Enforcement Follow-Up**

According to the Regulation, the minutes finding the misdemeanor and enforcing the sanction, and the Competition Council's decisions enforcing sanctions, remaining unchallenged within the terms set under the applicable law, shall be deemed as enforcement order, without the fulfillment of any other formality being required.

The fine shall be paid in cash or by payment order to the State budget, as follows:

- Within 15 days from submission, if the fine is established by minutes (*i.e.* by the competition inspectors for the misdemeanors falling under the competence thereof);
- Within 30 days from submission, if the fines is established by decision (by the Competition Council committees or Plenum).

A copy of the document attesting to the payment of the fine shall be sent to the Competition Council within 15 or 30 de, as per the document enforcing the

sanction, *i.e.* minutes, or decision, respectively (the copy of the payment order shall be certified by the treasury). Otherwise, the Competition Council shall refer the case to the National Agency of Tax Administration.

## 5 Means of Appeal against the Decisions of the Competition Council Plenum and Committees

Decisions of the Competition Council Plenum and committees enforcing fines for misdemeanors by virtue of Competition Law or GEO No. 117/2006 may be challenged at the Bucharest Court of Appeal within 30 days from submission. The decision of the Court of Appeal shall be challenged by final appeal at the High Court of Cassation and Justice.

The minutes establishing misdemeanors and enforcing sanctions, according to the Competition Law, may be challenged at Bucharest District 1 Court within 15 days from submission with final appeal before the administrative disputes department of the Bucharest Tribunal. The minutes issued in enforcing GEO No. 117/2006 may be challenged at the district court in whose jurisdiction the offender is headquartered within 15 days from submission, with final appeal before the administrative disputes department of the Tribunal.

Repealed enactments

The regulation on establishing and enforcing of sanctions by the Competition Council, enforced under Order of the Competition Council No. 80/2004

Author

[andreea.oprisan@tuca.ro](mailto:andreea.oprisan@tuca.ro)

## Employment and Social Security Law

Name of the enactment

Order No. 1418/2010 approving the Invalidity Degree Assessment Procedure for registration with the invalidity pension and the Procedure for verifying the Invalidity Degree Assessment ("**Order No. 1418/2010**")

Publication

Official Gazette of Romania, Part I, No. 696 of 19 October 2010

Entry into force

19 October 2010

Connections with other enactments

- Law No. 19/2000 on the system of public pensions and other social security rights;
- Government Decision No. 400/2001 approving the criteria and norms for clinical diagnosis, functional and work capacity assessment diagnosis based on which a person may be categorized in the 1st, 2nd and 3rd invalidity degree;
- Law No. 119/2010 establishing certain measures in the pensions field.



## Main provisions

Order No. 1418/2010 regulates the procedures for invalidity degree assessment for registration with the invalidity pension (i), and for verifying the Invalidity Degree Assessment (ii), for the purpose of establishing the right to invalidity pension of the persons claiming such right. The main issues of the above enactment are as follows:

**1 Invalidity Degree Assessment Procedure for registration with the invalidity pension**

According to the provisions of Order No. 1418/2010, the persons that may benefit from the invalidity pension are persons who lost the entire, or at least half of the working capacity.

To obtain invalidity pension, persons claiming to have lost the working capacity shall be subjected to a medical examination. The examination shall be performed at the request of the person requesting to be granted the pension for medical reasons. Further to the examination, the expert physician of the social security services shall issue a medical decision on the examined person's working capacity.

The invalidity degree assessment of the examined person shall be performed only if it is found out that such person lost at least half of his working capacity.

As to the timing of the medical examination, Order No. 1418/2010 provides that the assessment of the working capacity shall be performed towards the end of the medical leave for temporary working incapacity and after undergoing recovery programs.

The persons that request the examination of the working capacity, but are not insured in the public pension system, have to attest with medical documents to have underwent a recovery program.

The medical decision on the working capacity shall be issued within 30 days from the submission of the examination request. The decision shall be handed over to the examined person together with the recovery plan, which has to be complied with.

The medical decision on working capacity may be challenged within 30 days from submission, at the medical examination and working capacity recovery office within the territorial pension house.

The challenge shall be settled by the head physician who shall issue a new medical decision replacing the challenged decision, based on the documents in the medical file and on the reexamination of the person in question.

## 2 Procedure for verifying the Invalidity Degree Assessment

Inspection committees formed of expert physicians of the social security services within the medical examination department assessing the working capacity shall be established to verify the fashion of invalidity degree assessment of the person retired for medical reason.

If the committee may not reach a decision in the case at hand, the medical file shall be sent to the National Medical Examination and Working Capacity Recovery Institute (“INEMRCM”).

Failure of the analyzed person to appear before the committee or INEMRCM, as the case may be, shall trigger a suspension in the payment of the invalidity pension.

Further to reexamination, the committee shall issue a decision on the working capacity which may be challenged within 30 days from submission. Medical decisions which are not challenged within the term shall remain final. If errors are discovered in the decisions which remained final, they may be reanalyzed by the issuer.

Author

[mariana.magherusan@tuca.ro](mailto:mariana.magherusan@tuca.ro)

## Financial Services

Name of the enactment

Law No. 196/2010 amending and supplementing Government Ordinance No. 85/2004 on consumer protection upon the conclusion and execution of distance agreements regarding financial services (the “**Law**”)

Publication

Official Gazette of Romania, Part I, No. 723 of 29 October 2010

Entry into force

1 November 2010

Connections with other enactments

Government Emergency Ordinance No. 85/2004 on consumer protection upon the conclusion and execution of distance agreements regarding financial services (“**GEO No. 85/2004**”).

Connections with EU legislation

Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Directive 90/619/EEC of the Council and Directives 97/7/EC and 98/27/EC, and the provisions of Art. 90 of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC.

Main provisions	<p>The Law amends Government Emergency Ordinance No. 113/2009 with respect to the following issues:</p> <ul style="list-style-type: none"><li>• Correlation with Government Emergency Ordinance No. 113/2009 on payment services is achieved by the insertion of a new Art. 6 para. (3), requiring in the case of the services contemplated under both enactments, that the provisions of GEO No. 85/2004 on the pre-contractual information to be communicated by the provider to consumers and conditions of such communication to be replaced by the relevant provisions of Government Emergency Ordinance No. 113/2009, i.e. the provisions of Arts. 91 through 93 and 97 through 99;</li><li>• Furthermore, it repeals Art. 14 on the reimbursement by the consumer of the payments made through card-type modern payment systems for the payment of financial services at a distance, through a fraudulent use of the consumer's card and the cancellation of such transaction by the consumer.</li></ul>
Name of enactment	Law No. 197/2010 approving Government Emergency Ordinance No. 113/2009 on payment services (the " <b>Law</b> ")
Publication	Official Gazette of Romania, Part I, No. 724 of 29 October 2010
Entry into force	1 November 2010
Connections with other enactments	Government Emergency Ordinance No. 113/2009 on payment services (" <b>GEO No. 113/2009</b> ")
Main provisions	<p>The main amendments brought to GEO No. 113/2009 by the Law concern the communication of information by the provider to the consumers. Nevertheless, most of such amendments are mere corrections to the existing provisions, intended to give comprehensibility and cohesion to the legal text.</p> <p>On the other side, there are a few major amendments concerning the following issues:</p> <ul style="list-style-type: none"><li>• At the express request of the user, possibility is given to communicate the information which has to be sent by the payer, beneficiary, respectively on a mandatory basis, subsequent to the receipt of the payment order or, to the performance thereof, respectively, in other forms as well, rather than on paper;</li><li>• The scope of "Title IV – Rights and Obligations regarding the Provision and Use of Payment Services" is amended and, according to the new</li></ul>

wording of Art. 114 para. (1) shall apply to all the listed payment operations, in all cases, not just when the user acts as a consumer. In this case, by way of correlation with the provisions of Art. 114 para. (2), one may deem that only the provisions of this last article shall be of a supplementing nature (the parties may waive the enforcement thereof), while the remaining provisions of Title IV shall be of a mandatory nature, the case of operations with non-consumers included;

- The conditions listed under Art. 133 para. (1) on limiting the losses borne by the payer to a maximum amount of EUR 50, or equivalent in RON shall become cumulative, i.e. the payer must not have fraudulently acted and deliberately breached the obligations provided under Art. 124.

Furthermore, minor amendments are brought by eliminating the micro-entity definition (a concept which is not used in the wording of GEO No. 113/2009) and by supplementing the right of the National Bank of Romania to provide information of a professional nature to other relevant authorities as well, in accordance with special legal provisions (legislation on information technology and communications, personal data protection and money laundering).

As to the transitory provisions, Art. 191 is amended to compel the providers to enforce the provisions of GEO No. 113/2009, prior to the amendment of ongoing agreements, to secure their compliance with the provisions of Titles III and IV of GEO No. 113/2009. On the other hand, no term is set for correlating ongoing agreements with the applicable provisions. Furthermore, providers shall have the obligation to prove to have informed the users on the new applicable conditions and the need to amend the agreements.

Author

[patricia.enache@tuca.ro](mailto:patricia.enache@tuca.ro)

## Public Procurement, Concessions, Public Private Partnership

Name of enactment

Law No. 178/2010 on public private partnership (the “PPP Law”)

Publication

Official Gazette of Romania, Part I, No. 676 of 5 October 2010

Entry into force

4 November 2010

Connections with other enactments

If the conditions of a public private partnership are fulfilled and public order interests are not breached, the provisions of the PPP Law may be enforced in the

case of the relevant activities defined under Government Emergency Ordinance No. 34/2006, Chapter VIII "Sectoral Agreements", Section 1 "Relevant Activities".

## Main provisions

### 1 Purpose of the PPP Law

The purpose of the PPP Law is to regulate the performance of a public private partnership project with the public object of designing, financing, building, restoring, refurbishing, operating, maintaining, developing and transferring a public asset or service, as the case may be. This involves the following: (i) cooperation between the public partner and the private partner; (ii) own financial resources or resources attracted by the private investor; a pro rata allocation of risks between the public partner and the private partner; (iv) transfer the public partner's obligations concerning the design (starting from the technical design stage), construction, development, restoration/refurbishment, operation, maintenance and financing to the private investor.

### 2 Scope of the PPP Law

The law shall not be applicable in the following situations: (i) the relevant authorities declared the agreement secret, in accordance with the legal provisions in force; (ii) the public work concession and service concession agreements regulated under Government Emergency Ordinance No. 34/2006; (iii) the performance of the agreement requires imposing certain special national safety and security measures, according to the legal provisions in force; (iv) public property asset concession agreements regulated under Government Emergency Ordinance No. 54/2006; (v) protection of certain State interests requires it; (vi) joint venture agreements regulated according to law.

In addition, the provisions of the PPP Law are not applicable as regards the conclusion of the public private agreement ("**PPP Agreement**") which: (i) has as object the purchase or lease, by any financial means, of lands, existing buildings, other real estate assets or rights thereon; (ii) refers to the purchase, development, production or coproduction of programs intended for broadcasting by radio broadcasting or television institutions; (iii) refers to the provision of arbitration and conciliation services; (iv) refers to the provision of financial services related to the issuance, purchase, sale or transfer of securities or other financial instruments, specifically operations of the public partner performed to attract financial resources and/or capital, and to the provision of services specific to a central bank by the National Bank of Romania; (v) refers to the employment of work force, *i.e.* conclusion of employment agreements, or (vi) refers to the provision of research-development services fully remunerated by the public partner and whose results

are not exclusively intended to him for his own benefit.

### **3 Stages of the procedure**

1) Initiation of the public private partnership through the publication by the public partner of the notice of intent;

(2) Review and preliminary selection of certain private investors, prior to the conclusion of the project agreement which falls under the public partner's responsibility;

(3) Negotiation – stage in which the public authority holds consultations with the selected private investors and negotiates the contractual clauses, including the value of investment, PPP Agreement performance term, with the selected investors;

(4) PPP Agreement conclusion;

(5) Incorporation of the project company as a business company headquartered in Romania in order to achieve the objectives of the PPP Agreement.

During the first stage, the public partner shall carry out the following actions: (i) define and approve the opportunity to initiate the public private partnership project; (ii) prepare and approve the prefeasibility or substantiation study; (iii) prepare the document attached to the notice of intent; (iv) establish the committee assessing the letters of intent and appoint it by order, decision or instruction, as the case may be; (v) prepare and approve the assessment criteria, scoring grids and fashion of dealing with the letters of intent that are delayed or received unsealed and approve them by order, decision or instruction (vi) prepare and approve the criteria of negotiation with the selected private investors signing the project agreement, for the selection of the private partner with which the PPP Agreement shall be executed; (vi) publish the notice of intention in the Public Procurement Electronic System (PPES) and, should the value of the project exceed EUR 5 million, in the Official Journal of the European Union.

During the second stage, the following steps shall be taken: (i) free-of-charge distribution of the document attached to the notice of intent; (ii) receipt and registration of envelopes including the letters of intent prepared by the interested private investors; (iii) convening the committee assessing and opening the envelopes including the letters of intent in the presence of all the committee's members; (iv) assessment of the letters of intent and documents attached thereto; (v) preparation of the assessment report by the assessment committee and

submission thereof to the public partner for approval.

Throughout the negotiation stage, the negotiation committee shall be established with the selected private investors signing the project agreement, which shall carry out the negotiations by implementing the negotiation criteria for the selection of the private partner with which the PPP Agreement shall be concluded. In case the negotiation with the entity ranking first cannot lead to the conclusion of a public private partnership project agreement, the public partner shall initiate negotiations with the other selected investors, according to the hierarchical order of the selection, until a favorable result is obtained. This stage shall be ended by the selected private investor presenting the final offer.

The PPP Agreement shall include clauses regulating, *inter alia*: (i) type of activities; (ii) actual establishment of parties' obligations, as per the types of activities; (iii) negotiated value of investment; (iv) performance period and completion term thereof; (v) a definition of the PPP agreement's performance schedule, setting out the terms for: preparation of the feasibility study, preparation of the performance design, performance of financing, achievement of the public objective, maintenance/management/operation of the objective until the completion of the PPP Agreement, delivery of the objective to the public partner; (vi) participation shares in the public private partnership project underlying the proportions of participation in the project company and list of public or private assets brought by the partners; (vii) allocation of risks between the public partner and private partner throughout the PPP Agreement performance term;

(viii) performance criteria for the fulfillment of the PPP Agreement's objectives; (xi) clauses concerning withdrawal from the project; (xii) penalties for the case when the objectives set established under the agreement are not achieved. The negotiated PPP Agreement shall be submitted for approval to the Government or public authority, as the case may be, as holders of the right to manage the asset contemplated under the public private partnership. The final form thus approved may not be amended by parties' agreement, unless in a document of at least the level of the document approving the agreement.

The final stage is the incorporation of the project company. The project company shall be organized and shall operate throughout the PPP Agreement performance term as a business company whose share capital is held by the public partner and private investor. The project company's primary object of activity shall be the operation and management, as per economic principles, in accordance with its own articles of incorporation and operation, of all PPP

Agreement performance stages by a takeover of the obligations from the contracting parties, and transfer of the asset and services contemplated therein, to the public benefit, by the public partner.

Throughout the operation of the project company, the latter may not change its object of activity and may not perform economic activities beyond the express purpose of the project.

The project company and the 2 partners shall conclude a management agreement for the assets entrusted for management and a service agreement.

The project company shall be managed by a board of directors, in which the 2 partners shall be represented pro rata to their participation quota. The project company shall be entitled to make decisions neither on the change of the ownership or management form of the public or private assets with which the public partner participates in the public private partnership, throughout the full term of the PPP Agreement, nor on the assignment of certain rights received under the agreement.

The control on the compliance with the PPP Law shall be performed by the Head Unit Coordinating the Public Private Partnership and by the National Authority for Regulating and Monitoring of Public Procurement which is entitled to request in court to be established the absolute nullity of PPP Agreements concluded in breach of the provisions of the PPP Law.

Author

[arina.dobrescu@tuca.ro](mailto:arina.dobrescu@tuca.ro)





Contact details:

Victoriei Square  
4-8 Nicolae Titulescu Avenue  
America House, West Wing, 8th Floor  
Sector 1  
011141 Bucharest  
Romania

 (40-21) 204 88 90

 (40-21) 204 88 99

 office@tuca.ro

 www.tuca.ro

Disclaimer

This material is for reference only. It does not seek to provide final legal Advice, which may be requested according to each specific legal issue.

For details and clarifications on any of the topics dealt in our Legal Bulletin, please contact the following lawyers:

Florentin Țuca, Managing Partner (florentin.tuca@tuca.ro)

Cornel Popa, Partner (cornel.popa@tuca.ro)

Cristian Radu, Managing Associate (cristian.radu@tuca.ro)