

# Legal Bulletin

September-November 2012

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## Legal Bulletin

### Capital Markets

Name of the enactment	Law No. 167/2012 amending Law No. 297/2004 on the capital market ("Law No. 167/2012")
Publication	Official Gazette of Romania, Part I, No. 704 of 15 October 2012
Entry into force	18 October 2012
Connections with other enactments	<ul style="list-style-type: none"><li>• Law No. 297/2004 on the capital market, as amended and supplemented ("Law No. 297/2004");</li><li>• Government Decision No. 780/2006 on establishing the trading scheme for greenhouse gases emission certificates, as amended and supplemented.</li></ul>
Main provisions	<p>In short, the main role of Law No. 167/2012 was to establish the trading potential of greenhouse gases emission certificates, as follows:</p> <ul style="list-style-type: none"><li>• The amendment of the regulated market's definition, so as to include the greenhouse gases emission certificates as instruments which may be traded on such market, together with financial instruments;</li><li>• The fact that the provisions of Title VII "Market Abuse" of Law No. 297/2004 also apply to the greenhouse gases emission certificates admitted for trading on a regulated market in Romania or in a Member State, or for which an application for admission to trading on such market was registered, irrespective whether the deal took place or not on such regulated market, and to tender procedures for greenhouse gases emission certificates (held in accordance with the European laws in force);</li><li>• Also, the provisions of the same Title VII of Law No. 297/2004 shall apply to (a) operations carried out in Romania or abroad with greenhouse gases emission certificates admitted for trading on a regulated market located or operating in Romania, or for which an application for admission to trading on such market was registered and (b) operations carried out in Romania with greenhouse gases emission certificates admitted for trading on a regulated market in Romania or in a Member State, or for which an application for</li></ul>

admission to trading on such market was registered.

In addition, same Law No. 167/2012 confirms the possibility granted under the New Civil Code to financial investment services companies (S.S.I.F.) to carry out trust activities based on the permit granted by the National Securities Commission.

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## Civil Procedure

Name of the enactment

Law No. 206/2012 approving Government Emergency Ordinance No. 44/2012 amending Art. 81 of Law No. 76/2012 implementing Law No. 134/2010 on the Civil Procedure Code, and supplementing other related enactments ("Law No. 206/2012")

Publication

Official Gazette of Romania, Part I, No. 762 of 13 November 2012

Entry into force

The amendments concerning the Civil Procedure Code shall become effective on 16 November 2012. The amendments concerning the New Civil Procedure Code shall become effective on the same date as the code

Connections with other enactments

Civil Procedure Code (the "Civil Procedure Code")

Law No. 134/2010 on the Civil Procedure Law (the "New Civil Procedure Code")

Government Emergency Ordinance No. 44/2012 amending Art. 81 of Law No. 76/2012 implementing Law No. 134/2010 on the Civil Procedure Law, and supplementing other related enactments ("GEO No. 44/2012")

Main provisions

Law No. 206/2012 approves GEO No. 44/2012 postponing the entry into force of the New Civil Procedure Code for 1 February 2013. It also supplements both the current regulation, and the New Civil Procedure Code in terms of the arbitration proceedings concerning a dispute related to the transfer of the ownership right and/or the set-up of another right *in rem* over an immovable asset. Consequently, it is expressly provided that the arbitral award shall be submitted to the court of law with a view to obtaining a judgment or, an authenticated notarial deed, as the case may be. Subsequent to the verification by the court of law or notary public of the observance of the conditions and fulfillment of the procedures required under the law, and subsequent to the payment by the parties of the tax related to the transfer of the ownership right, the land book registration shall be performed and the ownership transfer and/or set-up of another right *in rem* over the immovable asset in question shall be performed.

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## Commercial Law

Name of the enactment	Government Emergency Ordinance No. 59/2012 on authorizing the Ministry of Economy, Commerce and Business Environment to establish a business company ("GEO No. 59/2012")
Publication	Official Gazette of Romania, Part I, No. 706 of 16 October 2012
Entry into force	16 October 2012
Main provisions	<p>Substantiated on the difficult situation of certain State-Owned or State-Controlled Companies caused by a high figure of debts, GEO No. 59/2012 sets forth the conditions for establishing a company aiming:</p> <ul style="list-style-type: none"><li>• To identify certain mechanisms for resuming and performing business activities under profitability conditions, to maintain employment positions;</li><li>• To develop the attractiveness and ways to increase product competitiveness with a view to selling same on the domestic and foreign markets.</li></ul> <p>GEO No. 59/2012 authorizes the Ministry of Economy, Commerce and Business Environment to initiate the procedures set forth under the law for the establishment of a State-Owned Romanian legal entity company with the following primary line of business "Agents involved in wholesale".</p> <p>The funding required to set up the share capital shall be supplied by the Office of State Ownership and Privatization in Industry, from the 2012 income and expenses budget for the privatization activity. State's rights and obligations in the established company shall be assigned under the ordinance to the Ministry of Economy, Commerce and Business Environment.</p>
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## Criminal Law

Name of the enactment	Law No. 187/2012 implementing Law No. 286/2009 on the Criminal Code (" <b>Law No. 187/2012</b> ")
Publication	Official Gazette of Romania, Part I, No. 757 of 12 November 2012
Entry into force	Law No. 187/2012 shall become effective on 1 February 2014, except for Art. 121 item 8 and Art. 249 of the Criminal Code, which shall become effective within 3 days from the publication in the Official Gazette of Romania.

On the same date, *i.e.* 1 February 2014, Law No. 286/2009 on the Criminal Code shall become effective (the “New Criminal Code”) and Law No. 15/1968 on the Criminal Code shall be repealed.

Within 6 months from the publication of Law No. 187/2012 in the Official Gazette, the Government shall submit to the Parliament for adoption:

- The draft law on organization and functioning of the probation system;
- The draft law on the execution of punishments, corrective measures and other non-custodial measures ordered by the judicial bodies in the course of the criminal trial;
- The draft law on execution of custodial punishments and measures ordered by the judicial bodies in the course of the criminal trial;
- The draft law mentioned at Art. 121 indent 8;
- The draft law on psychoactive substances.

These laws shall come into effect on 1 February, 2014.

#### Main provisions

The provisions of Law No. 187/2012 are mainly aimed at harmonizing the current criminal laws with the provisions of the New Criminal Code as well as at establishing rules to settle the conflict of laws arising from its entry into force.

The provisions of Law No. 187/2012 concern the application in time of the criminal law, from the general perspective as well as from the perspective of the application and execution of the criminal sanctions and of the punitive regime applicable to minors.

The new provisions amended and supplemented a series of laws containing criminal provisions, among which Law No. 59/1934 on cheques, Law No. 11/1991 on fighting against unfair competition, Law No. 64/1991 on patents, Law No. 129/1992 on the protection of industrial designs and models, Law No. 8/1996 on copyright, Competition Law No. 21/1996, Government Ordinance No. 29/1997 on the Aviation Code and Law No. 84/1998 on trademarks and geographic indications.

Law No. 187/2012 also refers to the New Criminal Code, providing norms for the interpretation or amending and supplementing certain provisions thereof.

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## Electronic Communications

Name of the decision	Law No. 154/2012 on the regime of electronic communication network infrastructure (“Law No. 154/2012”)
Publication	Official Gazette of Romania, Part I, No. 680 of 1 October 2012
Entry into force	31 October 2012
Connections with other enactments	<p>Government Emergency Ordinance No. 111/2011 on electronic communications, approved as amended and supplemented by Law No. 140/2012</p> <p>Government Emergency Ordinance No. 79/2002 on the general framework regulating communications, approved as amended and supplemented by Law No. 591/2002, as amended and supplemented</p> <p>Law No. 50/1991 authorizing the performance of construction works, republished as amended and supplemented</p>
Connections with EU legislation	Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services
Main provisions	<ul style="list-style-type: none"><li>• <b>General Issues</b></li></ul> <p>Law No. 154/2012 regulates specific issues of the legal framework of the electronic communication network infrastructure.</p> <p>The enactment includes three main categories of provisions: (i) provisions on the right of providers of electronic communication networks of access to properties, (ii) provisions on the shared use of the infrastructure and (iii) provisions on authorizing the construction of electronic communication networks.</p> <ul style="list-style-type: none"><li>• <b>Right of Access to Properties</b></li></ul> <p>Law No. 154/2012 regulates the right of access to properties granted to providers of electronic communication networks with a view to installing, maintaining or relocating electronic communication networks or infrastructure elements required to support same. The right of access to properties regulated under Law No. 154/2012 shall be expressly classified as an easement right.</p> <p>The right of access to properties may be exercised on both the public property of the State or territorial administrative units, and on the private property of the State or territorial administrative units or other individuals or legal entities; nevertheless, the conditions for exercising the right of access to properties differ as per the form of property on which access is requested.</p>

In addition to general conditions on the compatibility of the works to be performed in exercising the right of access to properties with the general requirements of town planning, spatial planning, quality in constructions, environmental protection, health or public order protection, the right of access to properties may be exercised on the public property if the exercise thereof is compatible with the public use or interest assigned to such immovable assets, while, in the case of private property, the right of access to properties may be exercised if it does not affect, or if it affects to an insignificant degree the right to use such immovable asset or if, in case another provider of electronic communication network, in the exercise of the right of access to properties, already performed works on, above, in or under such immovable assets, the right to use the immovable assets is not permanently affected by an additional restriction caused by the performance of such new works.

With a view to exercising the right of access to the public property, the holders of the right of management shall have the obligation to publish the terms and conditions for exercising the right of access, including the maximum rates, calculated in compliance with the principles set forth under Law No. 154/2012, and the documents that must be submitted by the applicants in order to attest the observance of such requirements. The provider of electronic communication networks interested in being granted the access shall have to submit an application to the holder of the right of management, which application shall be analyzed within 30 days. Access may be refused only in objective and well-documented cases. Failure to reply within the above term shall be deemed tacit approval.

Law No. 154/2012 provides that the central or local public authorities, as well as any other entities may not establish taxes, rates or any other additional amounts in connection with the exercise of the right of access to properties, save for the rates mentioned above which may be established in the agreements regarding the exercise of the right of access to properties.

The right of access to properties may be exercised with respect to both the private and the public property, subsequent to the conclusion of an authenticated agreement between the provider of electronic communication networks and the holder of the ownership/management right. If the agreement may not be concluded within two months from the submission of the application by the provider of electronic communication networks, any of the parties may take the case to the competent court, which shall pass a decision in lieu of agreement

between the parties, if the application is grounded. The conditions set forth under the agreement shall not discriminate between the providers of electronic communication networks.

- **Shared use of infrastructure**

Law No. 154/2012 regulates the right of electronic communication network providers to negotiate agreements for the shared use of infrastructure with the persons that hold or control infrastructure elements. Also, Law No. 154/2012 regulates the cases in which the National Authority for Management and Regulation in Communications is competent in requiring the persons that hold or control infrastructure elements to permit a shared use of the infrastructure and in establishing the conditions thereof, including the criteria for cost sharing.

- **Specific Provisions on Permitting the Construction of Electronic Communication Networks**

Law No. 154/2012 includes specific conditions in the field of permitting the construction of electronic communication networks.

Consequently, in the case of projects contemplating the permitting and performance of construction works, systemized routes shall be provided for the installation of electronic communication networks.

Also, the permitting of works of electronic communication network infrastructure, including the issuance of the coordinating endorsement for such works, and the design and construction of systematized routes of electronic communication networks shall be performed based on specific technical rules, to be approved by Government decision.

Another relevant provision in terms of permitting the construction of electronic communication networks sets forth that the buildings intended as housings or education facilities, financial and banking buildings, office buildings or hotels, for which construction permits are issued subsequent to 1 January 2013, shall be provided with access infrastructure enabling the provision of broadband electronic communication services.

Repealed enactments

Government Emergency Ordinance No. 79/2002 on the general framework regulating communications, approved as amended and supplemented by Law No. 591/2002, as amended and supplemented

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## Financial Services

Name of the enactment	Government Emergency Ordinance No. 73/2012 ("GEO No. 73/2012") amending item II of Annex No. 1 to Government Emergency Ordinance No. 50/2010 on consumer credit agreements ("GEO No. 50/2010")
Publication	Official Gazette of Romania, Part I, No. 803 of 29 November 2012
Entry into force	1 January 2013
Connection with other enactments	Government Emergency Ordinance No. 50/2010 on consumer credit agreements
Connections with EU legislation	Commission Directive 2011/90/EU of 14 November 2011 amending Part II of Annex I to Directive 2008/48/EC of the European Parliament and of the Council providing additional assumptions for the calculation of the annual percentage rate of charge, published in Official Journal of the European Union, Series L, No. 296 of 15 November 2011
Main provisions	<p>GEO No. 73/2012 amends Annex No. 1 to GEO No. 50/2010 on additional assumptions for the calculation of the annual percentage rate of charge ("APRC"), so as to secure a uniform computation method throughout the EU, a high degree of transparency and comparability of offers.</p> <p>Consequently, such additional assumption refer, <i>inter alia</i>, to the drawdown, term and repayment of credits, payment of interest and costs, credit ceilings and interest rates. All such elements are considered assumptions and particularized by types of credit agreements, which have to be taken into account by the credit institutions upon the computation of the APRC.</p> <p>As to the implementation in time of the amendments brought by GEO No. 73/2012, it should be noted that the contracts in progress upon its entry into force shall be subject to the law in force upon their execution date, unless the parties agree otherwise.</p>
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## Privatisations

Name of enactment	Government Emergency Ordinance No. 45/2012 supplementing Article 1 of Government Emergency Ordinance No. 88/2001 on establishing the Office of State Ownership and Privatization in Industry ("GEO No. 45/2012")
Publication	Official Gazette of Romania, Part I, No. 631 of 3 September 2012
Entry into force	3 September 2012

Connections with other enactments	Government Emergency Ordinance No. 88/2001 on establishing the Office of State Ownership and Privatization in Industry ("GEO No. 88/2001")
Main provisions	GEO No. 45/2012 was passed with a view to accelerating the privatization process and decreasing arrears in economy, in order to secure compliance with the commitments undertaken by the Government of Romania under the agreement with the International Monetary Fund, the World Bank and European Commission. Thus, as part of the procedures for privatization of certain State-Owner or State-Controlled companies in which the State of Romania exercises such capacity via the Ministry of Economy, Commerce and Business Environment, the Office of State Ownership and Privatization in Industry may carry out concomitantly procedures aimed at capitalizing certain receivables other public institutions, régies autonomes or State-Owned or State-Controlled companies have in the former, in the name and on behalf of the receivable holders, with the consent of the crediting entity and by applying the method established by the latter. Also, GEO No. 45/2002 provides that the amounts required to prepare and conduct the procedure for materializing the receivables, including costs incurred with the registration, consultancy and assessment of receivables may be paid by the Office of State Ownership and Privatization in Industry, and the latter shall recover such amounts from the price obtained through the receivables sale or from the crediting entity, should the sale not occur as per the agreement between the two entities.
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	<b>Public Utility, Concession, Public-Private Partnership Community Services</b>
Main provisions	Law No. 204/2012 approving Government Emergency Ordinance No. 13/2008 amending and supplementing Public Utility Community Services Law No. 51/2006 and Water Supply and Sewerage Service Law No. 241/2006 ("Law No. 204/2012")
Publication	Official Gazette of Romania, Part I, No. 791 of 26 November 2012
Entry into force	29 November 2012
Connections with other enactments	Public Utility Community Services Law No. 51/2006 ("Law No. 51/2006") Water Supply and Sewerage Service Law No. 241/2006 Public-Private Partnership Law No. 178/2010 ("PPP Law") Government Emergency Ordinance No. 34/2006 on awarding public procurement

## Main provisions

contracts, public works concession contracts and service concession contracts approved, as amended and supplemented, by Law No. 337/2006, as amended and supplemented ("GEO No. 34/2006")

Law No. 204/2012 brought many amendments to the legal provisions in matters concerning public utility community services, some of the most important being detailed below.

- **Procedure applicable upon conferral of management of public utility community services**

Prior to Law No. 204/2012, Law No. 51/2006 distinguished between the procedures applicable upon conferral of public utility community services.

Thus:

- Conferral of management of the water supply and sewerage service and heat supply service was achieved based on certain specific procedures set forth under Law No. 51/2006 (open public tender and direct negotiation) and under the requirements laid down by the secondary laws issued thereunder;
- Conferral of management of the locality sanitation service, public lighting service and service for the management of the public and private domain of territorial administrative units was achieved by means of the awarding procedures set forth under GEO No. 34/2006;
- Conferral of management of the local public transportation service was achieved based on the secondary regulations of issued pursuant to the special laws in the field of local public transportation.

Further to the amendments brought by Law No. 204/2012, the implementation of the procedures set forth under GEO No. 34/2006 was excluded in terms of the conferral of management of the public utility community services, the management conferral contract being expressly qualified as (i) a concession contract or (ii) public-private partnership contract, while the local authorities may choose in the process of awarding the contract for conferral of management of any public utility community service, save for the local public transportation, between:

- Specific procedures provided by Law No. 51/2006; and

- Procedures provided by PPP Law (opened procedure and competitive dialogue procedure).

As to the local public transportation service, the award of the management conferral contracts is still carried out based on the secondary regulations issued pursuant to the special laws in the field of local public transportation.

- **Assignment of the management conferral contract**

Law. 204/2012 expressly inserted the possibility of assigning the management conferral contract. Thus, assignment shall be permitted, but only in case of a spin-off, merger or to a subsidiary or the assignor economic undertaking, and in compliance with the initial contractual terms and with the approval of the decision-making authorities of the territorial administrative units.

- **Term of the management conferral contract**

Prior to Law No. 204/2012, the maximum term, both initial and extended, of a management conferral contract could not have exceeded 49 years. The management conferral contract could be extended only once, for half of the initial term at the most, without the final term exceeding 49 years.

Law No. 204/2012 changed the above regulations as follows:

- The initial term of the management conferral contract may not exceed 35 years;
- The management conferral contract may be extended, unrestrictedly as to the number of extensions, if the authority of the local public administration requires the operator, for a proper performance of the service, to make certain investments which could be redeemed within the time remaining until the contract completion only by an excessive increase in rates and taxes;
- The maximum term of the management conferral contract may not exceed 49 years.

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## Taxation

### 1 Amendments to the Fiscal Code

Name of the enactment

Law No. 208/2012 (“**Law No. 208/2012**”) approving Government Ordinance No. 15/2012 amending and supplementing Law No. 571/2003 on the Fiscal Code

Publication	Official Gazette of Romania, Part I, No. 772 of 15 November 2012
Entry into force	1 January 2013
Connection with other enactments	Law No. 208/2012 approved GO No. 15/2012 amended and supplemented as follows:
Main provisions	<ul style="list-style-type: none"><li>• The amounts collected subsequent to the issuance of the invoice shall be subject to the VAT cash accounting system;</li><li>• Failure to notify the entry in the VAT cash accounting system entails the application of the system's rules (both for supplies and acquisitions) starting with the date of obligation;</li><li>• Failure to notify the exit from the VAT cash accounting system entails the application of the normal rules of VAT collection and deduction.</li></ul> <p><b>2 Amendments to the Methodological Norms of the Fiscal Code</b></p>
Name of enactment	Government Decision No. 1071/2012 amending and supplementing the Methodological Norms for the implementation of Law No. 571/2003 on the Fiscal Code, as approved by Government Decision No. 44/2004 (" <b>GD No. 1071/2012</b> ")
Publication	Official Gazette of Romania, Part I, No. 753 of 8 November 2012
Entry into force	1 January 2013 or 8 November 2013, as the case may be
Main provisions	<p>GD No. 1071/2012 brought major supplementations to the Fiscal Code, mainly referring to the VAT- cash accounting system, VAT adjustments, invoicing and archiving, and to profit tax and excise duties as well.</p> <ul style="list-style-type: none"><li>• As to the <i>VAT cash accounting system</i>, the following details are given:<ul style="list-style-type: none"><li>- Non-residents (registered in Romania directly or through a fiscal representative), fixed establishments of the companies whose place of business is not located in Romania shall not implement the VAT cash accounting system;</li><li>- For purpose of implementing VAT cash accounting system, the RON 2.25 million turnover shall be computed based on the amounts (taxable base) declared in the VAT return, including the amounts reported under the settlement rows;</li><li>- Date of payment/receiving the payment for the operations when the payment is made by other means, such as settlement, receivables assignment, bank transfer, payment instruments, in-</li></ul></li></ul>

- kind payment;
- Rules on the adjustment of the VAT taxable base in the case of supply of goods or service for which the VAT cash accounting system was applied;
- Methods of VAT adjustments for goods and services in general and for capital goods, when the supplies were subject to the VAT cash accounting system;
- The exchange rate used within the VAT cash accounting system shall be the exchange rate that would have been used according to normal chargeability rules;
- Method of preparing the Sales and Purchases Ledgers.
- Other major amendments with respect to VAT refer to deductibility for protocol expenses (for goods, a limit of RON 100 per each present), VAT adjustment further to the abrogation of the obligation to self-collect VAT for certain goods missing from inventory and to the invoicing and archiving rules – including by electronic means.
- The chapter *profit tax* is amended as follows:
  - The income and expenses representing interest/penalties/contractual damages annulled by agreements concluded between the contracting parties shall be deemed taxable income, and deductible expenses, respectively, in the fiscal year in which same are registered;
  - In case of reorganization operations, the fiscal losses that are not recovered by the assignor taxpayer and are transferred to the beneficiary taxpayer are to be recovered on each payment term of the profit tax following the date on which such operations become effective, according to law, within the recovery period remaining from the initial term of 5, and 7 years, respectively, in the order said losses were registered by the assignor taxpayer.
  - The method of computing the transferred or maintained fiscal losses (in case of partial spin-off), as well as registering same in the fiscal records by the assignor taxpayer and beneficiary taxpayer.

- In the field of *excise duties*:
  - The conditions in which the authorized warehouse keeper or registered addressee may obtain a decrease in the warranty were amended.

### 3 VAT-upon-Collection Guidelines

Name of enactment	Order of the minister of Public Finance No. 1519/2012 approving the Guidelines for the Implementation of the VAT cash accounting system (“ <b>VAT Cash Accounting Guidelines</b> ”)
Publication	Official Gazette of Romania, Part I, No. 792 of 26 November 2012
Entry into force	1 January 2013
Connections with other enactments	Government Ordinance No. 15/2012 amending and supplementing Law No. 571/2003 on the Fiscal Code  Government Decision No. 1071/2012 amending and supplementing the Methodological Norms for the Implementation of Law No. 571/2003 on the Fiscal Code, approved by Government Decision No. 44/2004
Main provisions	The VAT Cash Accounting Guidelines appear as a legal collage including all the provisions of the Fiscal Code and of the Methodological Norms referring to the VAT cash accounting system.  In addition, the Guidelines include additional comments aimed at summarizing and explaining the legal provisions. Also, it is included a practical example referring to cash payments. The Guidelines may be accessed at the following link: <a href="#">VAT Cash Accounting System Guidelines</a> .
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## Transports

Name of enactment	Law No. 190/2012 on the liability of air navigation service providers (“ <b>Law No. 190/2012</b> ”)
Publication	Official Gazette of Romania, Part I, No. 738 of 1 November 2012
Entry into force	1 January 2013
Connections with EU legislation	Regulation (EC) nr. 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky;

Main provisions

Regulation (EC) No. 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky;  
Commission Implementing Regulation (EU) No 1035/2011 of 17 October 2011 laying down common requirements for the provision of air navigation services and amending Regulations (EC) No 482/2008 and (EU) No 691/2010.

Law No. 190/2012 regulates the issue concerning the air navigation service providers' legal liability for repairing the damages caused to a third party in the national air space or territory, as such terms are defined under Law No. 190/2012, further to an attributable action or inaction of such provider or agent or attorney-in-fact thereof.

With a view to covering the liability mentioned above, Law No. 190/2012 requires the air navigation service providers to conclude an insurance agreement for a minimum amount representing the equivalent of 700 special drawdown rights, for each event resulting in the occurrence of damages.

Air navigation service provisions in the absence of an insurance agreement concluded under the requirements of Law No. 190/2012 shall be deemed a misdemeanour and shall be sanctioned by fine ranging between RON 1,000,000 and RON 2,000,000. The persons in charge of finding misdemeanours and enforcing the related sanctions shall be the persons authorized to this effect by the minister of transports and infrastructure.

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