



Legal update by reference to the months
of March & April 2012

Legal Brief

Eversheds Lina & Guia SCA

Corporate & commercial Changes to the Company Law

Government Emergency Ordinance no. 2/28.02.2012 for amending and supplementing Law no. 31/1990 regarding commercial companies ("**GEO 2/2012**") published in the Official Gazette of Romania, Part I no. 143 of 2 March 2012.

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The purpose of the GEO no. 2/2012 amending and supplementing Law no. 31/1990 on commercial companies was to transpose the Directive 2009/109/CE modifying the Directives 77/91/CE, 78/855/CE and 82/891/CE regarding the reporting and documentation requirements for mergers and demergers, published in the Official Journal L59 of 2 October 2009.

The most important novelties brought by this piece of legislation are briefly listed below:

- In order to optimize and ease the examination process of the contributions in kind of a company incorporated by merger or demerger and the submission of a report in this respect with the Trade Register, it was deemed practical to renounce at such report, provided the project of merger or demerger was already submitted for examination to an independent expert. The same rules shall apply in the case of a capital increase for the performance of a merger or demerger and for the payment in cash to the shareholders of the absorbed or divided company.
- GEO 2/2012 provides the possibility of the company to replace the publication of the merger/demerger project in the Official Gazette, Part IV with the publicity realised through the company's website. The third parties will be informed about this new kind of publicity through the Trade Register, where a mention will be made in this respect.
- Any relevant information about the decision making process should be available on the website of the company, along with any documentation which the shareholders may need to acknowledge or to download.
- The merger by acquisition of a company owned at least 90% by the parent company is subject to a simplified procedure. No reports of administrators or independent experts are required (reducing cost and time) and it is not necessary to observe the requirements to inform the shareholders (it is not required for the companies which participate to the merger to provide the merger project, the shareholders' and experts' report, the financial statements).
- The shareholders who disapprove the merger or demerger may exercise the right of withdrawal within 30 days from the publication of the merger or demerger project (previously the right to withdraw was exercisable within 30 days from the date of the resolution of the shareholders' general meeting approving the merger/demerger plan). The shareholder's rights corresponding to the owned shares will be decided through the shareholders agreement or by an expert appointed by the parties, or in case of dispute, by the court.



Procedure for obtaining the document certifying the right to use an office space and the certificate of space in electronic format

Order no. 492 of 10/02/2012 regarding the procedure for requesting and issuing in electronic format the certificate regarding the registration of the document which attests the right of use over a space used as a registered office and the certificate for the space used as a registered office (published in the Official Gazette of Romania Part I no. 148 of 6 March 2012)

The procedure shall apply to companies which are required to submit upon their incorporation or when modifying its registered office, the document attesting the right of use of a space with the destination of a registered office and obtain the certificate of space for that registered office.

The application for the registration or for modifying the registered office shall be submitted by the company through its legal representative or an authorized person, using the

form foreseen in Schedule 1 of Order no. 492/2012 and submit the request with the Trade Register.

In its turn, the Trade Register will send the application form to the relevant tax authority, immediately after the registration of the company's file for its incorporation or modification of the registered office.

The tax authority shall issue and send to the Trade Register the relevant documents.

Public Procurement

Changes to public procurement regulations

Government Decision no. 219/2012 ("**GD 219/2012**") amending article 93 of Government Decision no. 925/2006 approving the Guidelines for the application of Government Emergency Ordinance no. 34/2006 on the award of public procurement contracts, of public works concession contracts and of public services concession contracts (published in the Official Gazette no. 197 dated 26 March 2012)

GD 219/2012 provides that the contracting authority has the obligation to conclude the procurement agreement within 7 days from the fulfillment of the waiting periods (as these are described in Government Emergency Ordinance no. 34/2006). Also, the contracting authority shall refrain from any decisions likely to create artificial causes for annulment of the awarding procedure. The contracting

authority must notify, within 48 hours, the National Authority for Regulating and Monitoring of Public Procurement ("**NARMPP**") regarding the conclusion of any new public procurement/framework agreement. Any claims in respect of the authority's breach of the aforementioned obligations shall be submitted to the NARMPP.



Order no. 136/2012 regarding the notification of the conclusion of the public procurement/framework agreement ("**Order 136/2012**") (published in the Official Gazette no. 250 dated 13 April 2012)

Order no. 136/2012 provides some details regarding the contracting authority's obligation to notify new public procurement/framework agreements. The notification is done electronically via the IT system of the NARMPP and it is based on a standard template notification form. Similarly, the winner

of an awarding procedure is entitled to file a complaint to the NARMPP if the contracting authority refuses to sign the public procurement agreement. The complaint will be submitted electronically and in the standard complaint form provided by Order 136/2012.

Labor

New amendments to Labor Inspection Law

Law no. 51/2012 amending and completing the Law 108/1999 for the establishment and organization of Labor Inspection (published in the Official Gazette no. 182 of 21 March 2012, as subsequently republished in the Official Gazette no. 290 dated 3 May 2012)

The main amendments refer to the redefinition of the duties relating to the Labor Inspection and restatement of the general and special duties of labor inspectors with reference to specific domains: labor relations, labor security and health, social assistance etc. Also, in order to render efficient the control performed by the labor inspectors and to raise the awareness of employers, the new amendments provide for more extended rights for the labor inspectors and increase the amounts of fines.

According to the new regulation:

- the labor inspectors have the right to identify based on the documents proving the identity of a person, the persons present at their work place or in other places subject to investigation and to order the filling-in of an identification sheet. Refusal to perform such action is sanctioned with a fine ranging from RON 5,000 to RON 10,000;
- the labor inspectors are allowed under the new changes, to take written statements, from employees, employers and their legal representatives or other persons who can provide information about the subject matter of the inspection or investigation or investigated event;
- sanctions ranging from RON 5,000 to RON 10,000 are provided for the legal entities obstructing the inspectors from performing their inspection duties (whether fully or partially);
- the inspected employers who fail to fulfill or fulfill partially the actions ordered by the labor inspectors shall also be subject to a fine ranging from RON 5,000 to RON 10,000;
- upon inspection, the labor inspectors may request and the investigated entities are obliged to provide any documents and information requested and which are necessary for the investigation purposes. A fine of RON 10,000 shall be applied to persons who are present at the investigated premises and refuse to provide information in respect to the investigated matters;
- the labor inspectors may order the prohibition, restriction or even the withdrawal or recall of a product from the market;



Environment & state aid Amendments to the legal framework regarding the certification and control of cultivators of genetically modified plants

[Order no. 61/2012 regarding the authorisation and control of cultivators of genetically modified plants and measures to ensure the coexistence of genetically modified plants with conventional and ecological ones \(published in the Official Gazette no. 211 dated 29 March 2012\)](#)

A major modification introduced by the Order concerns the minimum surface on which genetically modified plant crops can be set up. The said surface has been limited to 1 ha, unlike the previous regulation which provided a 2 ha surface. However, crops set up for research purposes as well as for demonstrative plots are exempt of such limitation.

Furthermore, the interdiction of cultivating genetically modified plants in the proximity of certified areas or areas under conversion period for ecological agriculture has been lifted.

However, the interdiction of cultivating genetically modified plants within the natural protected areas has been maintained.

The issuing term of the authorization for cultivating genetically modified plants has also been reduced to 7 working days.

The Order repealed Order no. 237/2006 of the Ministry of Agriculture, Forests and Rural Development regarding the certification of cultivators of genetically modified plants.

Data protection

The decision of the National Authority for Personal Data Protection ("Supervisory Authority") on cases when there is no obligation of notification of the processing of personal data

[The Decision no. 23/2012 regarding the cases when there is no obligation to notify the processing of personal data to the Supervisory Authority \(published in the Official Gazette no. 216 dated 2 April 2012\)](#)

The decision establishes new situations (in addition to those stipulated by Decision no. 100/2007 and Decision no. 90/2006 of the Supervisory Authority) when there is no obligation to notify the Supervisory Authority as to the processing of personal data, as follows:

- the data processor is a natural person or a private entity which performed an independent activity, authorized by a special law, for the fulfilment of their legal obligations;
- when the processing of personal data is made for the management of the database of the National Archives;
- when processing of personal data is made for book loans, films, other audio-visual works and reproductions thereof by public and private entities;
- when processing of personal data is made by the judicial authorities for the fulfilment of their legal obligations, other than those stipulated by the data protection law no. 677/2001;
- when the processing of personal data is made by local public authorities and authorities at county level and of the Bucharest municipality, for the fulfilment of their legal obligations;



- when processing of personal data is made for the intermediation of real estate transactions;
- when processing personal data of its members by political parties, provided that the data is not disclosed to third parties without the consent of the data subject.

Also, Decision no. 23/2012 abolishes some cases when the law required simplified notification of the processing of personal data as provided by Decision no. 91/2006 (some of them are included in the list above).

Also, the notification form was modified as a result of the change of the headquarters of the Supervisory Authority in "28-30 Gheorghe Magheru Street, District 1, Bucharest, Telephone: 031.805.9211".

The regime of cookies finally regulated

[Government Emergency Ordinance no. 13/2012 for the amendment of Law no. 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector \(published in the Official Gazette no. 277 dated 26 April 2012\)](#)

Law no. 506/2004 was amended in an emergency regime in order to avoid the triggering of the proceedings in front of the Court of Justice of the European Union taking into consideration the fact that the Romanian authorities haven't transposed in due term Directive 2009/136/EC amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

Thus, as far as the regime of the cookies is concerned, GEO 13/2012 stipulates that storing of information or access to the information stored in the terminal equipment of a subscriber or user is allowed only if the following cumulative conditions are met:

- the subscriber or the user has given his/her consent. The consent can be given also by using the settings of the web browser or similar technologies through which it may be considered that the user or subscriber has given his/her consent;
- prior to expressing the consent, the subscriber or user are provided with clear

information, according to art. 12 of the data protection law no. 677/2001, information that must fulfil certain requirements:

- (i) the information must be provided in a clear manner and it must be easily accessible to the subscriber or user, 8
- (ii) the information must include details as to the scope of the processing of the information stored by the subscriber or user or the information to which they have access.

For the situation in which the supplier approves the storing or the accessing by third parties of the information stored in the terminal equipment, the information according to pt. (i) and (ii) above shall include the general scope of the processing of such information by third parties and the way in which the user or the subscriber can use the settings of the web browser or similar technologies for deleting the information stored or to deny the access of third parties to such information.

As well, GEO 13/2012 brings some novelties in relation to: security of data processing, the registers of the subscribers as well as cases that are considered by law contraventions.



Civil Code New legislative changes brought by the Civil Code

Law no. 60/2012 for the approval of the Government Emergency Ordinance no. 79/2011 for the regulation of certain measures needed for the entering into force of Law no. 287/2009 on the Civil Code (published in the Official Gazette no. 255 dated 17 April 2012)

Law no. 60/2012 brings changes to Law no. 71/2011 for the implementation of Law no. 287/2009 on the Civil Code and to Government Emergency Ordinance no. 79/2011 for the regulation of some measures necessary for the entering into force of the Civil Code. Some of the most important changes refer to:

- The provisions of the Civil Code regarding the putting in default of the debtor are applicable to obligations born after the entering into force of the Civil Code. Thus, the moment which counts for the appliance of the provisions of the Civil Code (if the law doesn't stipulate otherwise) is the date when the obligation is born and not the date of the maturity of the obligation, as regulated prior to this amendment.
- The legal provisions that require creditors the claims of which were born in relation to a profession authorised by law to follow only the goods that are affected to the performance of that profession (in relation to which the claim was born) shall be applicable only to rights and obligations arising after the entering into force of the Civil Code.
- According to the law, the removal of the mortgage from the Land Book can be made based on the written declaration of the creditor (in authentic form).
- The term for the issuance of a new Land Book excerpt was decreased to 3 days (prior to this the term was 5 days) as of the issuance of the last Land Book excerpt.
- The termination of the common destination of the common parts of a building with several floors or apartments can be decided only with unanimity (prior to this legislative change, the law required a majority of 2/3).
- The provisions regarding the granting of compensatory benefits in case of divorce are applicable only if the reasons that determined the divorce appeared after the entry into force of the Civil Code.
- The Law no. 60/2012 entered into force as of April 20, 2012.



Contact Information

Eversheds Lina & Guia SCA

Victoria Center, 9th floor
145, Calea Victoriei,
Bucharest, Romania

T: +40 21 311 2561
F: +40 21 311 2562
E: office@eversheds.ro
W: www.eversheds.ro

Mihai Guia

Managing Partner
MihaiGuia@eversheds.ro

Cristian Lina

Managing Partner
CristianLina@eversheds.ro

Adrian Iordache

Partner
AdrianIordache@eversheds.ro

Cristian Guia

Partner
CristianGuia@eversheds.ro

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