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Legal update by reference
to the months of **May** and **June 2011**

Legal Brief
Lina & Guia SCA

Banking, Finance and Capital Markets

The e-Money Law

Law no. 127/2011 on the activity of electronic money issuance was published in the Official Gazette no. 437, dated 22 June 2011 ("**Law 127/2011**").

Law no. 127/2011 implements Directive 2009/110/EC of the European Parliament and of the EU Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions, amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC.

The main aspects which are regulated by Law no. 127/2011 are:

- the minimum conditions for accessing the activity of electronic money issuance;
- the authorization procedure applicable to electronic money issuers and the operational requirements;
- the legal regime of the outsourcing of activities performed by the electronic money issuers;
- the duties of the National Bank of Romania in its capacity of supervising authority, in relation to electronic money issuance activity;
- the rules governing electronic money issuance and redemption.

Within 30 days as of Law no. 127/2011 entry into force, the National Bank of Romania shall issue secondary regulations further detailing the legal regime of electronic money issuance.

Amendment of regulations regarding payment services and the legal regime of non-banking financial institutions

Government Emergency Ordinance no. 42/2011 ("**GEO 42/2011**"), amending Government Emergency Ordinance no. 113/2009 on payment services and Law no. 93/2009 on non-banking financial institutions was published in the Official Gazette no. 303 dated 03 May 2011.

Some of the most important amendments brought by GEO 42/2011 are as follows:

- in the context of the authorization of the payment institutions (as such are indirectly defined in GEO 42/2011), the National Office for Prevention and Control of Money Laundering shall provide to the National Bank of Romania, upon the latter's request, information on the persons and entities which are exposed to money laundering risks and to risks related to the financing of terrorism acts;
- payment institutions must carry out credit activities based on the principles of a sound and prudent commercial practice, and in accordance with the applicable regulations;
- the shareholders of a payment institution may decide to give up the authorization to perform payment services and dissolve the payment institution, but only if such entity is not subject to the insolvency procedure;
- the authorization to perform payment services shall be terminated de iure whenever the payment institution ceases to exist following a merger or a demerger, or becomes subject to the insolvency procedure;
- payment institutions shall set-up special credit risk provisions according to NBR regulations for credits activities related to payment services;
- the credit agreements related to payment services concluded by payment services providers, as well as the related security interests and guarantees are deemed writs of execution;
- non-banking financial institutions may provide services related to the issuance and administration of credit cards, other than those regulated by Government Emergency Ordinance no. 113/2009 on payment services, and may also perform activities related to the settlement of the transactions entailed thereby.

Real Estate

Regulation regarding the content and the procedure to be followed when issuing cadastral documentation in order to perform registrations with the land book

Order no. 785/2011 ("**Order no. 785/2011**") modifying and amending the Regulation regarding the content and the procedure to be followed when issuing cadastral documentation in order to perform registrations with the land book, approved under the provisions of Order no. 634/2006 (published in the Official Gazette no. 407/09.06.2011)

Order no. 785/2011 expended the content of the *documentation incorrectly performed,* therefore in accordance with new provisions, the *documentation incorrectly performed* shall also refer to the following:

- the improper requested service (reported to the current state of the immovable), as results from the records of the Office for Cadastre and Real Estate Publicity;
- miscalculations and discrepancies between the identity elements of the immovable asset described in the ownership title: proximity, cadastral identification, address and location of the immovable asset described in the location and delimitation plan of the property body;
- the content of the cadastral documentation is different from the legal status of the immovable asset;
- the cadastral documentation was performed without proper measurements to the land;
- discrepancies between the digital data and the analogical data contained in the cadastral documentation; etc.

The cadastral documentation shall be performed both on analogical and digital formats and also in standardized formats so to enable typing. Moreover, the authorised person to perform cadastral documentation shall insert the following information about constructions: year of construction, materials used for erecting the construction, and if the case, the energy performance certificate and the mention that the building is fitted out with elevator.

The authorised person shall be liable for the proper performance of the cadastral documentation and its correspondence with the actual status on the land, as well as for the proper identification of the property and its boundaries pursuant to the ownership title provided by the owner. Moreover, the authorised person is obliged to perform measurements to the land and to fill all the headings contained in the schedules attached to the above-mentioned regulation.

The head of the cadastral services shall coordinate, verify and control the activity to be performed by its counsels and shall execute together with the cadastral counsel the so-called completing and declining reports (*rom: referatale de completare si respingere*).

Order no. 785/2011 also brought some amendments to regulate the measurements difference. In this respect, in case the surface resulted from measurements is different from one of the following: (i) the surface registered with the cadastral documentation; or (ii) the surface integrated in the cadastral documentation for which no previous land book was opened; or (iii) the surface mentioned in the ownership title, the Order no. 785/2011 provides for the following rules:

- in case the surface resulted from measurements is smaller, the surface resulted from measurements shall be registered with the land book based on the cadastral documentation and the owner' statement;
- in case the surface resulted from measurements is larger with a percentage up to 2% inclusive, the surface resulted from measurements shall be registered with the land book based on the cadastral documentation and the owner' statement;
- in case the surface resulted from measurements is larger with a percentage up to 2% - 5% inclusive, the surface resulted from measurements shall be registered with the land book based on the cadastral documentation, provided that both the owner' statement and the

proximity receipt minute (integrating the approval of all the owners of adjacent immovable assets) are to be submitted;
- in case the surface resulted from measurements is larger by more than 5%, the cadastral documentation shall be rejected.

For the avoidance of any doubt, the above-mentioned rules to be applied to such discrepancies shall not apply to the lands that are located *extra muros* and were claimed pursuant to a restitution claim under the provisions of Law 1/2000, Law no. 18/1991, Law no. 169/1997 and Law no. 247/2005. When first registering such lands with the land book, in case the surface resulted from measurements is smaller than the surface mentioned in the ownership title, such surface may be registered with the land book based on the cadastral documentation and the owner' statement.

Other provisions brought by Order no. 785/2011 refer to virtual overlapping and repositioning of the immovable assets having or not construction or real estate investments over the concerned lands. In this respect, should any virtual overlapping and repositioning of the immovable assets be found, the overlapping and repositioning shall be solved as follows:

- *ex officio*, by the cadastral counsel without being necessary the owner's approval, if the repositioning operation involves rotation, shifting, changing or amending the surface geometry by a rate up to +/- 2% (to be applied in case the immovable is fenced and /or an existing plot plan is registered);
- with the written approval of the owner, if the repositioning operation involves changing or amending the geometry of the surface and the surface has decreased by more than 2%. The owner's written approval shall be given in front of the authorised person or the designated persons of the territorial office. Please note that in case the owner refuses to give his approval, the following note shall be registered *ex offi*cio with the land book: «*Immovable registered in the cadastral plan without proper form and location*».

We are also mentioning that the content of the cadastral documentations related to immovable assets that are owned or administrated by public institutions is to be established through a cooperation protocol.

Modifications to the legislation regulating expropriation for public utility

Law no. 90/2011 ("**Law no. 90/2011**") modifying and amending Law no. 255/2010 regarding expropriation for public utility required for developments of national, country or local interest (published in the Official Gazette no. 407/09.06.2011)

In accordance to Law no. 90/2011, the *expropriation corridor* shall be established based on the final form of the feasibility studies or based on the urban planning or cadastral documentation and shall be approved together with the technical and economical indicators, the urban planning documentation or the cadastral documentation (where appropriate). Nevertheless, the corridor shall include the list of the immovable properties to be expropriated.

Once the technical and economical indicators or the urban planning documentation or the cadastral documentation (where appropriate) were approved, the expropriator is obliged to (i) record the individual amounts representing the compensation amount paid to the owners of the immovable assets, as shown in the records of the Office for Cadastre and Real Estate Publicity or of the administrative units; and also to (ii) post the list containing the immovable assets to be expropriated, such assets being part of the expropriation corridor.

Within 30 calendar days as of the notification date (such notification announcing the intention to expropriate the owners and also the list with the immovable assets to be expropriated), the owners of the immovable assets included in the list are required to establish together with the expropriator a fair compensation to be paid. Please note that the owners of the immovable assets located on the expropriation corridor and integrated in the urban planning documentation, feasibility studies (the final form) or cadastral documentation, are obliged, after being noticed in advance by the expropriator, to allow access in order to properly perform the topographical measurements and the geotechnical studies.

Regulation regarding the organisation and the activity of the office for cadastre and real estate publicity

Order no. 784/2011 ("**Order no. 784/2011**") modifying and amending the Regulation regarding the organisation and the activity of the office for cadastre and real estate publicity, approved under the provisions of Order no. 633/2006 (published in the Official Gazette no. 413/14.06.2011)

Please note some of the modifications and amendments brought by Order no. 784/2011:

- the land book records are public documents that can be consulted by the interested parties during the working hours;
- the form, the size and the content of the records are to be established by the general manager of the National Agency under the terms and conditions of an order to be issued;
- part A of the land book shall contain the description of the immovable asset, indicating the order number (e.g.: A.1.) and the cadastral number of the immovable asset, the surface, the schedule to part A – the plan of the immovable asset and the description of the immovable asset; in case of any dismemberment or unification operations, the new immovable assets resulted from such operations shall receive new cadastral numbers for which new land books are to be opened;
- part C of the land book regarding the dismemberment/division of the ownership right (*rom: dezmembramintele dreptului de proprietate*) shall contain the following:
  - the superficies right, usufruct right, use right, habitation right, lease right, concessions right, administration right, servitude right, mortgage and privilege rights, as well as the assignment of receivables;
  - the legal facts, the personal rights or any other contractual relationship, as well as any other claims regarding real estate rights registered in this part;
  - the lien and the enforcement procedure against the immovable assets or incomes;
  - any other amendments, rectifications or notes in connection with the registrations made in this part.
- the promise to execute an agreement regarding an immovable asset and the terms for executing such agreement may be noted with the land book provided that have not been passed more than 3 years from its fulfilment;
- no land book excerpts for authentication purposes are to be issued while the application form is not finalised. The land book excerpt for information purposes and the certified copies of the land books shall indicate the number and the registration date of the pending application forms and also the object;
- in case an application form for issuing a land book excerpt for authentication purposes was registered within the general entry record, the cadastral number, subject of the application form, shall be blocked for a 5 business day term, starting with the date and hour of such application form;
- in case a land book excerpt for authentication purpose is required in connection with a share of the ownership right, only the share forming the scope of the future agreement shall be blocked;
- the inscriptions that preserve the privilege or the mortgage right, but have not been renewed under the provisions of the Civil Code, are to be automatically deregistered through the resolution attesting the first registration of the immovable asset with the land book;
- any interested persons may file a re-examination form against the land book resolution attesting the admission or rejection of the registrations within 15 days from the communication of such resolution. Such re-examination form shall be automatically registered with the land book. The re-examination form shall be solved by the chief registrar. Moreover, the re-examination of the technical part of the documentation shall be performed by the chief engineer and a report shall be issued in this respect. Mentioned to be made, that the re-examination form shall be solved based on the documents attached to the initial form only;
- the registration in relation to a pre-sale purchase agreement is automatically deregistered when the agreement between the same parties is registered with the land book. However, when no agreement

is to be concluded whatsoever, the de-registration of the pre-agreement shall be performed as follows:

- with the mutual consent of the parties granted in an authenticated form;
- based on a final and irrevocable court decision;
- at the party's request, based on the resolution of the notary attesting the denial of the other party to execute the agreement or the other party 's failure to come to the notary in order to execute the agreement (although the party was informed/ noticed in this respect).

- the unification of the immovable assets may be performed if such immovable assets are located in the same territorial - administrative units and no charges are created over them. In case charges are created over the immovable assets to be unified, the unification operation shall be performed only with the approval of such persons that hold the mortgage rights.

Employment and Social Security Law

New Social Dialogue Law

Law no. 62/2011 on social dialogue, published in the Official Gazette of Romania no. 322 of 10 May 2011

The new Social Dialogue Law creates a uniform framework incorporating legislation previously scattered in a series of regulations pertaining to: unions, employers' associations, National Council for Social Dialogue, the Social and Economic Council, collective bargaining and labour conflicts.

With the entry into force of the Social Dialogue Law the following prior legislation is repealed: (i) Law no. 54/2003 on trade unions; (ii) Law no. 168/1999 on labour conflicts; (iii) Law no. 356/2001 on employers' associations; (iv) Law no. 130/1996 on collective bargaining labour agreements; (v) Law no. 109/1997 on the organization and operation of the Social and Economic Council; and (vi) Government Decision no. 369/2009 on the establishment and operation of social dialogue commissions.

The new Social Dialogue Law is far from being merely a formal integration of previously existing legal texts – on the contrary, it brings several important changes par rapport to previous regulations, as briefly described below:

Trade unions

We briefly summarize below some of the main provisions related to trade unions as brought about by the Social Dialogue Law:

- employees, public clerks and cooperative members and workers in agriculture are entitled to create and/or adhere to a trade union;
- at least 15 employees hired in the same employer organization are required to create a trade union;
- individuals holding public office, as well as judges and military personnel cannot create or adhere to a trade union;
- trade unions acquire legal capacity upon registration with the competent court;
- the previous provision that prohibited the termination of union leaders during the term of their mandate and for two years thereafter, has not been maintained in the new regulations (it continues however to be prohibited to amend or terminate the employment of union leaders for reasons pertaining to adherence to the union or union activity);
- the period in which the person elected in the management body of a trade union is remunerated by the trade union shall be considered contribution/vesting period for the purposes of social security legislation;
- the new regulation has eliminated the employer's obligation to provide the representative trade union, free of charge, with premises and endowments necessary for the performance of union activities (though such facilities may be negotiated through the collective bargaining labour agreements);
- in the performance of their mandate, trade unions are entitled to use specific means, such as: negotiation, conciliation, mediation, arbitration, protests, marches, meetings or demonstrations, as well as strikes, in accordance with the law;
- employers are no longer obliged (but may do so if they so require) to invite the representative trade union to participate in the meetings of the Board of Directors or other management body when

deliberating on matters of professional, economic or social interest for the employees;

- members of the trade union who have been elected in its executive/ management structures and who work within the employer's organization are entitled to a reduction in the monthly work program, the period of such reduction to be negotiated through the collective bargaining labour agreement and without the employer's obligation to remunerate the member for such days (previously, the law explicitly provided for a reduction by 3-5 days for trade union activities, without any impact on salary rights);
- the new regulation introduces new (increased) representation thresholds – as such, in order to be considered representative for the purposes of negotiating collective bargaining labour agreements at the level of the employer, the number of trade union members must be at least 50% plus one of the number of company employees (in the previous form of the law the number of union members was at least 1/3 of the number of employees).

National Tripartite Council for Social Dialogue

Some of the more relevant provisions of the new Social Dialogue Law in this respect are as follows:

- following the withdrawal of the Government from the Social and Economic Council, the new Social Dialogue Law now provides for the establishment of a new consultative body at the national level – the National Tripartite Council for Social Dialogue – for the purposes of allowing for continuity in the tripartite consultation mechanism between the Government, the trade unions and the employers' associations;
- the National Tripartite Council for Social Dialogue shall be chaired by the Prime Minister (or, in its absence, by the Minister of Labour, Family and Social Protection);
- the primary competences of the National Tripartite Council for Social Dialogue are: (i) ensuring a framework for consultation between the social partners on minimum wage; (ii) debating and analysing proposed programs and strategies relevant to the labour market; (iii) resolving via a tripartite dialogue social and economic disputes; (iv) negotiating and concluding social pacts and arrangements, as well as other nation-wide agreements.

Social and Economic Council

The main element of novelty with respect to the Social and Economic Council is the replacement of the representatives of the Government with representatives of the civil society.
The Social and Economic Council is a public institution of national interest, autonomous, established for the purposes of ensuring tripartite dialogue at the national level between the employers' associations, trade unions and representatives of the civil society.
The Social and Economic Council issues points of view on draft legislation, and must be consulted by the initiators of legislation impacting the labour market. It is a consultative body for the Parliament and Government and has the following main attributions: (i) issues opinions on draft legislation in the labour sector; (ii) drafts, upon request of the Government or the Parliament, studies and analyses on the social and economic status; (iii) informs the Government and/or the Parliament on the occurrence of specific social and economic factors/ circumstances which require regulatory intervention.

Collective bargaining

The Social Dialogue Law introduces several major amendments in respect of collective bargaining, as briefly described below:

- the new law eliminates the need for negotiation of a collective bargaining labour agreement at the national level;
- collective bargaining labour agreements may be negotiated at the employer's level, at the level of groups of employers and at the level of industry/activity sectors;
- collective bargaining remains mandatory only at the level of the employer, and only where the employer hires more than 20 employees;
- the initiative for negotiation belongs to the employer (or employers' association) and negotiation cannot exceed 60 calendar days (except where otherwise agreed between the social partners);
- the new law eliminates the '*erga omnes*' applicability of collective bargaining labour agreements (as was the rule before) and provides that the level of activity sectors, the collective bargaining labour agreement applies only for those employers which have adhered to the employers' associations which have signed the collective agreement;

- therefore, the clauses of collective bargaining labour agreements shall apply as follows: (i) for all employees within the employer's organization, for collective agreements concluded at this level; (ii) for all employees hired in the companies which are part of the group of employers for which the collective agreement has been concluded; (iii) for all employees hired in the companies which are part of the sector of activity for which the respective collective agreement has been concluded and which have adhered to the employers' associations which have signed the respective collective agreement;
- collective agreements shall be concluded for a determined period, which cannot be less than 12 months or more than 24 months (although the parties may agree on an extension of their applicability by not more than 12 months);
- collective agreements shall be concluded in written form and shall be registered as follows: (i) collective agreements concluded at the level of the employer, with the Territorial Labour Inspectorate; (ii) collective agreements concluded at the level of groups of employers and/or sectors of activity, with the Ministry of Labour, Family and Social Protection;
- collective agreements apply from the date of their registration with the competent authority (or from a subsequent date, as agreed by the parties).

Labour disputes

The Social Dialogue Law also brings new rules with respect to labour disputes, as briefly analysed below:

- the new law eliminates the concepts of "conflicts of interests" and "conflicts of rights", replacing them with the concepts of "collective labour conflicts" and "individual labour conflicts";
- the law guarantees the right of employees to initiate collective labour conflicts in relation to the commencement, performance and conclusion of negotiation of collective agreements;
- collective labour conflicts may be initiated when: (i) the employer refuses to commence negotiation for a collective agreement, where such agreement has not been concluded or the previous one has expired; (ii) the employer does not accept the employees' claims; or (iii) the parties do not reach an agreement on the conclusion of a collective agreement until the deadline for finalization of the negotiations;
- employees shall be represented by the representative trade union at the level of the employer's organization in respect of collective labour conflicts (where there are no representative unions, and the employees have elected other representatives to represent them for negotiation purposes, such representatives shall also represent them in respect of collective labour conflicts);
- during the term of a collective agreement employees cannot initiate collective labour conflicts;
- collective labour conflicts shall be initiated only after the prior registration thereof, as follows: (i) with the Territorial Labour Inspectorate, for collective labour conflicts at the level of the employer; or (ii) with the Ministry of Labour, Family and Social Protection, for collective labour conflicts at the level of groups of companies or sectors of activity;
- a strike may be declared only if, in advance, the parties have exhausted all mechanisms for resolving the collective labour conflict via other amiable means (mediation, conciliation), and only after a warning strike has been put in place and subject to notifying the employer of the impeding strike by the organizers at least 2 working days in advance;
- the resolution to go on strike shall be taken by the representative trade union (s) participating in the collective labour conflict, with the written approval of at least ½ of the members of the said trade unions;
- for companies where no representative unions are organized, the resolution to go on strike shall be taken by the employees' representatives, with the written approval of at least ¼ of the number of employees of the company;
- during strike the individual labour agreement shall be suspended by effect of the law and only health insurance rights shall be preserved (this provision departs from the previous regulation, which stipulated that during strike employees maintained all rights arising from the labour agreement, except for salary rights);
- individual labour conflicts shall be deferred for resolution to the competent court of law in whose jurisdiction the claimant is domiciled or works;
- claims may be brought forward by employees whose rights have been breached, as follows: (i) for contesting unilateral measures relating to the execution, suspension or termination of a labour agreement, within a term of 45 calendar days from the date the claimant became aware of the measure; (ii) for determining the nullity of a labour agreement, at any time while the respective agreement applies; (iii) for the payment of damages for prejudices caused or for any other monetary claims, within 3 years from the date of occurrence of the trigger event;

New rules for keeping and updating the General Registry of Employees

Government Decision no. 500/2011 regarding the General Registry of Employees, published in the Official Gazette no. 372 of 27 May 2011

The new legislation provides for the methodology for keeping and maintaining the General Registry of Employees and related matters.

Each employer is obliged to create and communicate to the relevant Territorial Labour Inspectorate the General Registry of Employees, as well as to provide it for review of the labour inspectors, upon the latter's request. The Registry shall be held and updated by one or more individuals appointed by way of a written decision issued by the employer (this activity may also be outsourced to third party contractors which are registered for such services with the Territorial Labour Inspectorate – in this case, the employer shall inform the Territorial Labour Inspectorate accordingly).

The Registry shall be created and maintained in electronic format, and shall contain data referring to: (i) identity of the employees; (ii) date of hiring; (iii) secondments and beneficiary employer; (iv) title/ position according to the Classification of Occupations in Romania; (v) type of employment agreement; (vi) salary, bonuses and other incentives; (vii) any suspension of the employment agreement and causes thereof; (viii) date of termination of employment.

Data shall be filled into the Registry as follows:

- upon hiring the following elements shall be filled in not later than the working day immediately preceding commencement of activity: identification data, hiring date, information on any secondment, title/ position, type of employment contract, normal duration of work and salary and related bonuses;

- any amendments in salary/bonuses level shall be fed into the Registry within not more than 90 days from occurrence and any cause for suspension shall be recorded in the Registry within a maximum of 20 working days from the date of suspension;

- termination of employment shall be recorded in the Registry upon the very date of termination of employment or, alternatively, on the date the employer became aware of the event or cause leading – by effect of the law – to the termination of employment;

- any amendments to: (i) the identification date of the employee; (ii) period of secondment; (iii) title/position; (iv) normal duration of work; and (v) salary and related income shall be recorded in the Registry not later than the immediately preceding working day prior to the lapse of a 20 working day term from the occurrence of the modification.

The Registry shall be transmitted in electronic format to the Territorial Labour Inspectorate in whose jurisdiction the employer is headquartered. The Registry shall be maintained in electronic format at the employer's headquarters or, as applicable, branch, agency, representative office or other such unit without legal capacity to which the competence for keeping the Registry has been delegated.

In addition, employers are bound to elaborate and maintain up to date a Personnel File for each employee, which shall be kept at the company's headquarters and presented to the labour inspectors upon request.

The new regulations enter into force on August 1, 2011.

New amendments to the template regulated employment agreement

Order of the Ministry of Labour, Family and Social Protection no. 1616/2011, published in the Official Gazette no. 415 of 14 June 2011

Order no. 1616/2011 brings a series of amendments and completions to the standard template regulated employment agreement (as provided in the annex to the Order of the Ministry of Labour and Social Solidarity no. 64/2003).

The following are the more relevant amendments:

- inserting a new distinct section dedicated to professional evaluation criteria;
- new mentions shall be made in the section related to 'Salary' with respect to other additional in kind or in cash additions granted to the employee;
- it is now clearly provided that the trial/ probation period shall be calculated by reference to calendar days, while the notice period upon resignation shall be calculated by reference to working days;
- the list of rights and obligations of the employer has been amended to include the right to determine the individual performance targets, as well as the obligation to submit a copy of the employment agreement to the employee prior to commencement of the work.

New fines for dismissing employees on parental leave

Law no. 132/2011 approving Emergency Government Ordinance no. 111/2010 regarding parental leave and monthly child care compensation, published in the Official Gazette no. 452 of 28 June 2011

The new legislation provides that employers which breach the prohibition to terminate the employment relationship of an employee falling under one of the following situations shall be sanctioned by a fine of 10,000 RON (~ EUR 2,400):

- employees on parental leave of up to one year or two years, or – in case of children with disabilities – of up to three years of age of the child;
- employees returning to work and subject to payment of the insertion incentive;
- employees returning to work after parental leave, for a period of up to 6 months from such return.

Environment

Law on the prevention and sanctioning of acts of environment degradation

Law no. 101/2011 on prevention and sanctioning of acts of environment degradation was published in the Official Gazette Part I no. 449 of June 28, 2011 („**Law no. 101/2011**")

The Law establishes criminal measures in order to assure an effective environmental protection.

The most important crimes regulated by the Law are as follows:

- Collection, transport, exploitation or elimination of waste, including supervision of such measures and the subsequent maintenance of elimination areas, as well as the actions undertaken by broker during the waste management process by failure to observe relevant legal provisions that may cause the death or the serious injury of a person or a significant prejudice to the environment is punished with prison from 6 months up to 3 years;

- Export of waste by failure to observe the relevant legal provisions, where the activity falls within the scope of article 2, point 35 of the EC Regulation no. 1.013/2006 with respect to the transport of waste, whether transported by a single or more operations is punished with prison from 2 up to 7 years;
- The exploitation of an installation where a dangerous activity is performed or where hazardous substances are stored or used with violation of the relevant legal provisions, able to cause the death or injury of a person or a serious prejudice to the environment is punished with prison from 6 months up to 5 years;
- Trade with protected wild flora and fauna specimen, or parts or derivatives thereof, by failure to observe relevant laws, with the exception of the case when the act has an impact on a minor number of such specimen and has an insignificant impact on the conservation of such species is punished with prison from 3 months up to a year or fine;
- Production, import, export, introduction on the market or the use of ozone depleting substances is punished with prison from 6 months up to 3 years;
- Discharge, emission or introduction in the air or soil of a quantity of substances that can cause death or serious injury of a person or a significant prejudice to the environment is punished with prison from 1 up to 5 years;
- Production, handling, processing, treatment, temporary or permanent storage, import, export of dangerous nuclear or radioactive substances is punished with prison from 3 months up to 10 years.

Law no. 101/2011 implements the Directive 2008/99/EC of the European Parliament and of the Council dated November 2008 on the protection of the environment by means of law.

New obligation for Manufacturers and importers of electric and electronic equipment

Order no. 1441/2011 regulating the methodology of establishing and managing of the financial guarantee by manufacturers of electric and electronic equipment was published in the Official Gazette Part I no. 379 of May 31, 2011.

According to Order no. 1441/2011, manufacturers and importers who carry out individually their obligations of administration of electric and electronic waste as well as collective organizations that take over the obligation of administration of electric and electronic waste have to set up a financial guarantee in order to cover collection, recycling and exploitation costs of electric and electronic equipment.

Order no. 1441/2011 establishes the calculation methodology of the financial guarantee. The manufacturers and importers shall constitute the guarantee and send to the National Agency for Environment Protection the proof of the constitution in a 60 day term from the date of the publication of the Order in the Official Gazette.

Failure to comply with this obligation may attract sanctions up to RON 50,000 (~ EUR 12,000).

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