LEGAL UPDATE

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IN THIS ISSUE:

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INSURANCE

Amendments to the Insurance Law

As of May 30, 2004 a quite significant amendment brought to the Romanian insurance legal framework entered into force by the enactment of Law no. 172/2004. The amendment of the Insurance Law is mainly due to the requirement of aligning the financial services - including insurance - legislation to the European Union requirements but also to the proposals made by the Romanian insurance market players who were faced in practice with numerous disparities and inconsistencies of the already old Law no. 136/1995 on Romanian insurance and reinsurance.

The alterations made are important and address long awaited clarifications of the existing provisions, as well as novelties for the Romanian insurance system, such as:

Freedom movement of services

Above all, the free movement of services has been set as a principle also for the insurance field by repealing the provisions that compelled Romanian natural and legal persons to conclude insurance contracts only with Romanian insurers as well as those that required the insurance companies operating in Romania to transfer risks for purpose of reinsurance only to reinsurers operating on the domestic market. It thus becomes possible for the insured, as well as the insurance companies to have the option to request the conclusion of an insurance contract abroad, regardless of the availability of the respective insurance or reinsurance services on the Romanian market.

Automobile liability insurance

One other amendment that is considered significant by the insurance companies - who shall be imposed more restrictive conditions for authorisation of this type of insurance - as well as by the insured, refers to the deeming as compulsory by law not only of the automobile liability insurance for losses brought to third parties pertaining to motor vehicle accidents on the Romanian territory, but also for losses brought outside Romania's borders. The option, already available for European Union countries, to unify in one insurance policy both the domestic automobile liability insurance and the "Green Card" insurance (International Motor Certificate) is now open.

Moreover, in order to ensure the implementation of this new legal requirement in Romania - a country having a relatively low automobile liability insurance coverage level of approximately 65% - two major types of measures have been imposed as a novelty:

(i) On the one hand, that it is compulsory to submit proof of an existing automobile liability insurance when the motor vehicle is registered and when each periodical technical inspection of the motor vehicle is made;

(ii) On the other hand, the Insurance Supervisory Commission together with the Ministry of Administration and Internal Affairs shall create a unique

data base at national level comprising information pertaining to this type of insurance.

These measures are truly operative, considering the fact that the sanction applicable to those who refuse to follow this legal obligation has remained that of a fine and the withdrawal of the motor vehicle registration certificate until the document proving the automobile liability insurance is presented.

Also, we mention that by the amending law the provisions that obligated the insured or their representatives to notify in writing the insurer with respect to the occurrence of the insured risk within 4 days from such occurrence have been repealed.

The utmost good faith principle (uberrimae fidei)

One of the typical obligations within an insurance contract is that of the insured to inform the insurer as completely and correctly as possible with respect to all the aspects linked to the risk that is to be insured. Such obligation is also known as the "utmost good faith principle" or *uberrimae fidei* and has been detailed and strengthened by the amendments to the Insurance Law.

The obligation of the insurer to inform the insured

This time supporting the insured, a protection measure for them was set by compelling the insurer to inform the insured, at the time the insurance contract is concluded but also for its duration upon at least a few elements. Among these we mention: those linked to optional, additional clauses and the benefits brought by choosing them, essential data pertaining to the commencement and termination of contract, premium terms of payment, indemnities calculations and means of payment, applicable law.

New provisions applicable to life insurance

Apart from the fact that it was succeeded to expressly mention the classification of insurances in general (non-life) insurances and life insurances within the Law's recital, as such a regulation would have requested it from the beginning, Law no. 172/2004 brings an important alteration to the field of life insurance, accident and sickness insurance as well as health insurance. This refers to the obligation of the insurers not to perform payment of any amount towards the insured/beneficiary, other than the indemnity or the amount representing the returns of premium reserves earlier than 2 years from the date the insurance contract was concluded. Moreover, after this term has elapsed the partial withdrawals of premium reserves are allowed only at minimum 6 months intervals.

Express regulations for other types of insurance

By this amendment of the Insurance Law a specific and altogether essential type of insurance for the financial domain becomes expressly regulated, the *credit insurance and the financial loss insurance*.

Thus the bail and credit insurances cover the risks related to total insolvency, export credit risks (except for those provided by special laws) of instalment sale, mortgage loans, agricultural loan, as well as direct and indirect securities. It is important to mention the new legal provision according to which if a credit insurance covers the non-payment by the insured's debtor of a loan granted, the insurer is not allowed to condition the payment of indemnity with the commencement by the insured of a loss recovery or enforcement procedure against the respective debtor. Also, it has been provided that, if not otherwise agreed between the parties, the indemnity pertaining to the financial loss risk shall comprise the effective loss, but also the loss of profit as well as the general expense directly or indirectly linked to the occurrence of the insured risk.

Termination of the insurance contract by the insurer for non-payment of premiums by the insured

If before the entering into force of the Law no. 172/2004 the insurers were entitled to unconditionally terminate the insurance contracts in case the insured breached their premium payment obligations, at the present, the insurers have the obligation to notify the insured upon their obligation to pay the premium with 20 days ahead of the payment date. Failure of the insurer to comply with such obligation is considered a misdemeanour and could be sanctioned with a fine or even with the temporary interdiction for the insurer to operate on the insurance market for certain types of insurance.

Coinsurance and retrocession

The new provisions of the Insurance Law also expressly regulate certain terminology, otherwise basic in the insurance field, as *coinsurance* – understood as the assuming of the same risk by two or more insurers – and *retrocession* – the mechanism pursuant to which a reinsurer can cede to another reinsurer, in its turn, the risk assumed – adding these definitions to that of *reinsurance*, definition that existed since the initial form of the Insurance Law.

The Guarantee Fund and the Traffic Victims Protection Fund

The Law no. 172/2004 has also brought long awaited clarifications in what concerns the *Traffic Victims Protection Fund*. This Fund was created since the enactment of the initial form of the Insurance Law in 1995, however due to an, apparently minor, error in its drafting it could not be used for its intended purposes. From now on this Fund can be used for protecting those who have incurred losses due to traffic incidents pertaining to registered automobiles whose driver remained unknown **or** – that replaced the former "*and*" – the respective vehicle did not hold automobile liability insurance. The insurers' obligation to contribute to the creation of this Fund is set at an amount that shall not exceed 5% of the gross premium level collected for automobile liability insurances.

Furthermore, with respect to protecting the insured, or other third party beneficiaries that may incur losses due to the insurer's insolvency a *Guarantee Fund* shall be created

that shall be administered and operated by the Insurance Supervisory Commission and to which the insurers shall annually contribute a maximum 10% quota of the gross premium level collected from direct insurance activities.

The insurer's contributions to these two Funds shall have the legal regime similar to that of budgetary debts, in what regards the interest and delay penalties but also their enforcement.

CIVIL PROCEDURE

New Civil Procedure Code amendments

Less than one year from the enactment of profound significance revisions brought to the Romanian Civil Procedure Code by the Government Emergency Ordinance no. 58/2003 that entered into force at the end of August 2003, new provisions regarding the Romanian courts jurisdiction and civil procedure rules have been passed by the Romanian Parliament Law no. 195/2004 on the approval of the Government Emergency Ordinance no. 58/2003 ("Law no. 195/2004").

The Civil Procedure Code

New rules of jurisdiction for the Romanian courts

Although saluted by the majority of doctrine in the field as being consistent with the judicial systems of European countries, with the Romanian inter-war tradition but also with the requirement for the supreme court in Romania to ensure the correct and unitary application of law by all Romanian courts, the ruling of final appeals (*recursuri*) by the supreme court – unless otherwise provided by special laws- could not be efficiently implemented in practice.

The Supreme Court that became the "*High Court of Cassation and Justice*" after the Romanian Constitution's revision was not able to face the huge number of files with which it was addressed following the entering into force of the Government Emergency Ordinance no. 58/2003. The official statistics of the High Court thus indicate that if for the entire year 2003 the total number of cases on the roll of its panels of judges was of 43,201, only for the first quarter of the year 2004 this number of cases has been way outnumbered by already reaching 53,472.

It is for sure that such overload of the supreme court was also one of the reasons that led to the Law no. 195/2004 deciding to renounce the rule according to which all final appeals (*recursuri*) shall be ruled upon by the High Court. It has been decided however that all court decisions for which the Civil Procedure Code or a special law provided only the final appeal (*recurs*) as a mean of review, such final appeal shall no longer fall under the jurisdiction of the High Court but shall be ruled upon by the court immediately superior to the court that has issued the decision in question, or, as the case may be, by another court provided by special law.

This principle has been emphasized by the express providing of the District Courts and

Courts of Appeal possibility to have jurisdiction to rule over final appeals (*recursuri*) should a special law indicate such jurisdiction.

Elimination of the possibility to file an appeal for new types of cases

Considered as being the classic mean of review allowing a superior court to verify all aspects of the merits of the case – legal, as well as factual -upon which a court of first instance has ruled – the appeal has been eliminated for certain categories of cases, for reasons linked either to the acceleration of the proceedings, reducing the parties expenses in claims of lower significance, or even for simplifying the procedure. A new category of cases has been added to those for which the appeal has been eliminated as a mean of review by Law no. 195/2004 , that is *all actions whose subject matter have a value lower that ROL 1 billion, in civil as well as in commercial matters.*

Certainly for these type of cases that may be further reviewed using a final appeal (*recurs*), the final appeal shall have similar characteristics to the appeal, allowing the court ruling on the final appeal to examine the case thoroughly, not being limited this time to the existing grounds for quashing, commonly used for ruling upon final appeals.

Furthermore, due to the amendments brought to the rules of jurisdiction, we mention that the parties involved in these types of cases shall not have access to superior courts (Courts of Appeals, High Court of Cassation and Justice) to rule upon their means of review.

Alteration of the provisions regarding the final appeal procedural rules

The procedural rules for ruling upon a final appeal have been amended, mainly through the repealing of the procedural rules for "granting in-principle" newly introduced in August 2003. The "granting in-principle" procedure had the purpose of relieving the courts that ruled on final appeals (mainly the High Court) of the final appeal claims that did not meet the legal requirements (term for filing, stamp duty, falling under the grounds for quashing etc.)

This procedure had been criticized in practice for the fact that during its application by a panel of judges specially designated by the court's President, the parties did not have access to trial, not being subpoenaed and not being allowed the possibility to challenge the "in-principle granting" decision through which their final appeal was preliminary denied, the said decision being final and binding. Nevertheless, similar "filter type" measures for relieving the courts are used in the vast majority of Roman-Germanic and common law judicial systems, either by reducing the grounds for quashing, either by requesting and "authorisation" of the mean of review, either by requesting for the case to be a significant one of interest for jurisprudence.

Matters related to the proof of having paid the required stamp duty and the term during which certain documents could be submitted as evidence have been also

clarified with respect to the final appeal procedural rules.

Transitory provisions meant to relieve the supreme court-High Court of Cassation and Justice

In order to make possible the relieving of the courts ruling upon final appeals and not only, the Law no. 195/2004 has set specific rules for administrative conveying of files between courts for certain cases, by applying in general the principle according to which new procedural rules shall become immediately applicable. However, several exceptions are made, that shall certainly have a transitory application.

Rules for the "summon for payment" procedure

The Law no. 195/2004 has also amended several provisions regarding the jurisdiction and means of review for the special procedure of "summon for payment" provided by the Government Ordinance no. 5/2001, as further completed and amended.

Following these amendments, the "summon for payment" claim as well as the debtor's means of review against the decision containing the summoning for payment and the claim filed by the creditor challenging the decision on the "summon for payment" shall be ruled upon by the courts of first instance having jurisdiction according to the general rules of jurisdiction.

Thus, the courts of first instance having jurisdiction based on the general rulers of civil procedure shall also have complete jurisdiction upon any matter related to the "summon for payment" procedure.

COMPETITION LAW

This month, another set of normative acts in the Competition field has been passed, that completes the legislative packet, entered into force during the months of March-April.

The instructions concerning the conditions and application criteria of clemency politics based on the provisions of art. 56 par. (2) of the Competition Law no. 21/1996.

Representing an element of novelty, the mentioned Instructions aim at the development of certain stimulations for the undertakings involved in agreements forbidden by the Competition Law no. 21/1996 (generically called "*cartels*"), who are ready to admit and renounce these practices, but are discouraged by the possible obligation to pay a high fine.

Immunity to fines

In order to be exempted from the application of fines corresponding to the misdemeanours provided by the Competition Law no. 21/1996 ("**Law no. 21/1996**") in case of infringement of the provisions regarding the interdiction of anti-competitive practices, of abuse of a dominant position and of the prohibited economic concentrations, an undertaking must be in one of the following situations: (a) to be the first who provides evidence which, in the opinion of the Competition

Council, allows for the opening of the investigation procedure regulated by Law no. 21/1996 or (b) to be the first who provides evidence which, in the opinion of the Competition Council, allows it to prove an infringement of art. 5 par. (1) of Law no. 21/1996, referring to forbidden practices.

The first case of exemption is applicable to the extent in which, at the date when the undertaking communicates the probative elements, the Competition Council did not hold enough elements related to the supposed cartel, able to start the investigation procedure provided by Law no. 21/1996.

For the undertaking to benefit of the second case of exemption, two conditions must be cumulatively met: (i) the Competition Council did not hold, at the date when the undertaking provided evidence enough to establish the breach of the provisions regarding the forbidden practices and (ii) no undertaking had obtained the conditioned immunity in accordance with the exemption case from point (a) above, in relation with the supposed cartel.

Reduction of the fine

Even if it does not meet the legal requirements with a view to obtain the immunity fine, the undertaking may benefit, in certain conditions, a reduction of the fine, up to 50 % comparing to the level that would have normally been applied.

In order to obtain the reduction, the respective undertaking shall have to (i) provide to the Competition Council evidence that refer to the supposed breach of the law, that have the nature of an additional significant contribution in comparison with those already held by the undertaking, as well as (ii) to cease the presumed illegal activity, at the latest when the evidence is submitted to the Competition Council.

Replacement of certain previously issued regulations and instructions

The regulatory process also consisted of passing certain new regulations and instructions that repealed the previous provisions in the matter (adopted during 1997 and/or 2002), a process necessary in line with implementing the communitarian *acquis* in the field, as well as to render effective the normative acts entered into force within the months of March/April. Mainly it refers to: (i) the Regulation for the application of provisions of art. 5 and 6 of Law no. 21/1996, concerning the anti-competitive practices, (ii) Instructions concerning the application of art. 5 of Law no. 21/1996, in case of vertical understandings, (iii) Instructions concerning the application of art. 5 of Law no 21/1996, the horizontal cooperation agreements, (iv) Instructions regarding the computation of the turnover in cases of anti-competitive practice provided in art. 5 par. (1) of Law no. 21/1996 and in cases of economic concentration, (v) the Regulation concerning the exemption of the research-development agreements from the interdiction provided in art. 5 par. (1) of Law no. 21/1996, (vi) the Regulation concerning the agreements exemption regime for the insurance field

agreements from the interdiction provided in art. 5 par. (1) of Law no. 21/1996 etc.

Distinct regulations for certain relevant markets

The process of distinct regulation of certain fields governed by a specific regimes went on by adopting new normative acts, including: (i) the Regulation concerning the exemption regime, on categories of understandings, decisions taken by the associations of undertakings and concerted practices with regards to the consultations for the passenger transport tariffs for the regular air services and allocation of slots at airports, from the interdiction provided in art. 5 par. (1) of Law no. 21/1996, (ii) the Regulation concerning the exemption regime, on categories of understandings, decisions taken by the associations of undertakings and concerted practices, in the field of maritime transports, from the interdiction provided in art. 5 par. (1) of Law no 21/1996, (iii) Decision no. 620/2004 of the President of the National Authority of Regulation in the Field of Natural Gas for the approval of the Norms regarding prevention of the abuse of dominant position on the natural gas internal market.

JUDICIAL REORGANISATION AND BANKRUPTCY

Law no. 149/2004 (O. G. no. 424) brings a series of modifications to Law no. 64/1995 on the judicial reorganization and of bankruptcy procedure, with the aim to accelerate and simplify the procedures of judicial reorganization and bankruptcy.

Extension of application

Law no. 149/2004 extends the category of the persons to which the procedures of reorganization and bankruptcy apply by nominating agricultural companies and economic interest groups. Moreover, the procedures instituted by Law no. 64/ 1995 are to be applied also to state-owned companies for the period in which special financial supervision procedures have been instituted upon them.

Application for commencement of procedure

As for the entities that may submit the application for commencement of the procedure to start, the capacity of the Chambers of Commerce's capacity to carry out this application has been withdrawn. However, such competencies have been acquired by the National Bank of Romania, the National Securities Commission and Insurance Supervising Commission, for the companies and entities that are under their supervision and control.

Another amendment promoted by the new law regards the reduction of the minimum debt amount which may start the procedure, from 5,000 to 3,000 EUR. In case several separate applications are filed, these shall be colligated, their total amount to be taken into consideration. Also, the quantum of the bail that may be required by the judge to the creditors commencing the procedure has been reduced: from 30% to 10% of the value of the debt.

The payment of the creditors holding guarantees

In accordance with the amendment law mentioned above, the creditors holding guaranteed debts may ask for the immediate capitalization of the goods constituted as guarantee for the payment of their debts, thus avoiding the reorganization and bankruptcy procedures.

Appointment of an administrator

The appointment of an administrator shall be mandatory in all cases, the syndic judge being obliged to appoint an administrator by the decision of opening the procedure. Even in the cases of exception when the debtor shall be allowed to still manage the activity, he shall be under the supervision of the appointed administrator.

In accordance with the new requirements of Law no. 64/1995, the administrator must be an expert in reorganization and liquidation, condition applicable both to natural and legal persons, including the representatives appointed by such legal persons.

Supplementary powers for the administrators

Among other powers provided by the new amendments for the administrator, it was also imposed the obligation of monthly lodging with the case file of a report on the carried out activity. Moreover, within the first report that shall be forwarded after the opening of the procedure, the administrator must evaluate the possibilities of judicial reorganization of the debtor. In case his proposal aims requesting bankruptcy, it shall be submitted to the vote of the first meeting of the creditors.

Recognition of the effects of the legal set off

The enactment amending Law no. 64/1995 admitted the effects that legal set off may also produce on the debts of the insolvent debtor. Therefore it has been established that opening of the procedure has no effect upon the legal set off, in case its conditions were fulfilled at the date of the procedure was commenced. Consequently, the interested creditor may invoke extinction of debts by legal set off, thus avoiding the procedure of reorganization and bankruptcy.

Claims for cancellation of the patrimonial transfers effected by the debtor

The claims that aim at the cancellation of patrimonial transfers effected prior to the opening of the procedure shall be exercised within one year from the date the term for submitting the administrator's initial report has expired, but without overpassing 18 months since the date the procedure commenced. The respective claims shall be registered within the relevant publicity registries.

The reorganization plan

A series of amendments aim at the proposal and application procedure for the reorganization plan Therefore, besides reformulating the powers of those entitled to propose a reorganization plan, the terms

for its execution have also been reduced. The maxim duration admitted for the execution of the reorganization plan was reduced from 3 to 2 years, and, moreover it was established that the syndic judge can no longer prolong the terms for submitting the reorganization the terms for submitting the reorganization, but only to reduce such terms.

New cases of the procedure suspension

New exceptions have been instituted from the rule in accordance with the decisions of the syndic judge are not suspensive of execution. Therefore, the decisions of entering in bankruptcy may also be suspended and those by which the contestations against the plan of distribution of the funds obtained by liquidation and debts cashing shall be solved, on basis of art. 107 of the law.

Closing of the procedure due to lack of the amounts covering administrative expenses

The new amendments brought by Law no. 149/2004 have reintroduced the rule according to which in any stage, the reorganization or bankruptcy procedure shall be ceased by a syndic judge's decision if the goods are insufficient for covering the administrative expenses and if no creditor shall be interested in advancing them. Also, Law no. 64/1995, in its new form, provides that objections against the decision for ceasing the procedure shall no longer be allowed.

FISCAL PROCEDURE CODE

Less than 6 months since its entering into force, the Fiscal Procedure Code ("FPC") becomes the object of the first amendments by the enactment of Law no. 174/2004 (O. G. no. 465). Consequently FPC suffers numerous modifications and completions that aim both at clarifying certain aspects already included in the old regulation and at introducing certain novelty provisions.

Having no intention to make an exhaustive presentation of the series of amendments of FPC, we shall hereinafter resume to a concise enumeration of the most important ones.

Procedure of amending the FPC

Within the FPC there have been introduced regulations similar to those provided in the Fiscal Code with respect to the subsequent modification and completion procedure, in the sense that they shall be made only by means of law, enacted, as a rule, 6 months before its entering into force. As for the date of such modifications entering into force, it has been established, as in the case of the Fiscal Code, the first day of the year following the one in which the amending law has been passed.

The conflict of interests, abstention and recusal of the fiscal bodies civil servants

By the modification of FPC it has been established that, besides other cases provided by the law, the fiscal body civil servant implicated in an administration

procedure shall be in a conflict of interests if: (i) within the respective procedure he is a tax payer, husband/wife of the tax payer, up to the third degree relative of the tax payer, representative or custodian of the tax payer; (ii) within the respective procedure he may acquire an advantage or may bear a direct disadvantage and (iii) there is a conflict between him, the husband/wife, relatives of the parties up to the third degree, including.

We note that a possible issue may appear by applying these provisions as a consequence to the fact that the law does not regulate the terms "direct advantage" and "direct disadvantage", different interpretations being possible from case to case.

Another element of novelty introduced by the law on the approval of the FPC's represented by the institution of the obligation of abstention from the fulfilment of the procedure by the civil servant involved in a conflict of interests and, correlatively, of the tax payer's right to recuse a civil servant involved in a conflict of interests who did not comply with the abstention obligation.

Nullity of the fiscal administrative act

The sanction of nullity and voidness has been instituted, which may be ascertained at request or ex officio, for the fiscal administrative acts that do not contain elements referring to the name, surname and capacity of the authorised fiscal body representative, to the name and surname or denomination of the tax payer, to the subject matter of the administrative act or signature of the authorised fiscal body representative. Still it should be observed that the irregularities referring to the signature of the authorised fiscal body representative shall not lead to nullity in case of electronically generated programmes if the legal requirements applicable for these documents shall be complied with.

The right of the fiscal body to hold documents of the tax payer

To avoid the tax payer's alienation or destruction of the documents, registers and financial-accounting documents or of any material element that makes the proof of establishing, registering and paying the fiscal obligations, the right to hold any or all these documents for a period up to 30 days has been granted to the fiscal body, or in exceptional cases, with the approval of the manager of the fiscal body, for a period of up to 90 days.

Determination of the terms computing method

For the clarification and unification of the computing method for the FPC terms, it has been established that they shall be computed in accordance with the Civil Procedure Code. Consequently, the fiscal procedure terms shall be computed per free days, the day in which the term starts and the day in which it is completed not being computed.

Special record and control of the tax payers without activity

As a completion to the rules that regard the control of tax payers, the new form of the FPC provides for those tax payers, who in 12

consecutive months shall not deposit fiscal declarations and financial situations, shall not effect payments and shall not forward demands to the fiscal bodies, to be listed in a special record of inactive tax payers, and in 3 months time they shall be submitted to fiscal inspection.

Moreover, throughout the period of registration with this special record, the inactive tax payers shall have their certificate of fiscal registration suspended. The inactive tax payers may become active again in case they submit fiscal declarations or financial situations, effect a volunteer payment, make formal requests to the fiscal bodies as well as in case the fiscal body ascertains that they carry out activities that are subject to the fiscal law.

Limitation of the fiscal inspection duration

According to the new legal provisions, the duration of the fiscal inspection shall be set depending on its objectives and may not overpass 3 months. By exception, in case of big tax payers or of those having secondary offices, the duration of the fiscal inspection may last for a longer period of time, but it may not overpass 6 months.

Suspension of the fiscal procedure in case of addressing the criminal investigation bodies

The new dispositions inserted within FPC provide for the procedures carried out by the fiscal bodies to be suspended in case the criminal investigation bodies are addressed in relation to committing a crime. In such a situation, the decision of taxation regarding subject matter of the criminal investigation bodies may be issued only after the definitive ruling of the criminal case.

Ex officio set off reciprocal debts

The fiscal body has been empowered by the new legal provisions to effect the ex officio set off each time it ascertains the existence of reciprocal debts between the tax payer and the budgets. Set off of the debts shall be effected with obligations owed to the same budget, the remaining balance being used to compensate the obligations owed to other budgets. This possibility shall not be applicable in case of the local budgetary debts.

Detailed presentation of the fiscal bodies' possibility to grant incentives for the payment of budgetary debts

Unlike the previous provisions of the FPC, the notion of incentives for payment of the budgetary debts that may be granted by the local budgetary creditors through the authorities that administer these budgets has been specified.

Therefore, the local budgetary creditors may grant for the outstanding budgetary obligations they administer (taxes, rents, royalties, contributions and other obligations to the local budget) the following incentives: (i) rescheduling; (ii) payment deferrals; (iii) deferrals for the payment of interests and/or penalties of any type, except for the interests owed for the rescheduling period; (iv) deferrals and/or exemptions or delays and/or interest reductions and/or delay penalties, except

for the interests owed for the deferral period; (v) exemptions or reductions, under the conditions of the law.

Granting the incentives has been conditioned by the constitution of guarantees, the new provisions establishing their limits also, in case of natural or legal persons. We specify that in case of legal persons, the guarantee must represent 100% of the entire local budgetary debt for which the incentive has been granted.

Repeal of the provisions regarding submittal by the legal persons of a bail of 20% of the amount owed in case of complaint against the enforcement proceedings

As a consequence to the decisions of un constitutionality pronounced by the Constitutional Court, the new legal provisions have abrogated art. 164 of the FPC, a text by which the legal persons were compelled to deposit a bail of 20% of the owed amount, in case they filed a complaint against the enforcement proceedings.

Institution of crimes and new misdemeanours in case of non-compliance with certain FPC provisions

We point out within this context that the amendments brought to the FPC sanction as crimes (punished by prison or by penal fee) the following facts: (i) embezzlement, substitution, degradation or alienation by the debtor or by the third parties of the goods attached in accordance with the provisions of FPC; (ii) withholding and non-payment within maximum 30 days since the due date by the payers of budgetary debts of the amounts representing withholding taxes.

Also a series of facts that represent non-compliance with the legal regime imposed in case of excised products have been sanctioned as misdemeanours.

Introduction of the possibility of reduced payment of misdemeanour fines

In accordance with the new provisions, in case of application of misdemeanour fines by the fiscal bodies, the tax payers may pay in 48 hours half of the minimum of the fine provided within the FPC. The obligation of the ascertaining agent to mention this possibility in the minutes of sanctioning has been provided.

Interdiction of customs clearing for new products in case of non-payment of the amounts previously owed in customs

We specify that the amendments brought to FPC have introduced the interdiction for the tax payers that do not pay in the legal term the taxes or other amounts owed in the customs, to carry out other customs clearing operations until the total extinction of the respective debts.

The responsibility of the state and the civil servant for the losses caused to the tax payers

Another novelty within FPC is the express regulation of the principle according to which both the State and the administrative-territorial units shall be held liable for losses

caused to the tax payers by the fiscal bodies civil servants while exerting their duties.

On the other hand, the FPC also provides with a character of principle that the occurrence of the State and of the administrative-territorial units responsibility shall not cancel the personal responsibility of the fiscal bodies civil servants in case of exerting their duties with mala fides or serious negligence.